representation candidates, it will be able to improve administrative efficiency and effectiveness by operating with a smaller number of directors while continuing to fulfill its statutory obligations regarding the fair representation of its members. The proposed rule change will thereby contribute to perfecting the mechanism of a free and open market and a national market system, which is also consistent with the protection of investors and the public interest.

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

Within 35 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 90 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 Amex 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–2009–12 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2009–12. 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, on official business days between the hours of 10 a.m. and 3 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–2009–12 and should be submitted on or before March 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–3575 Filed 2–19–09; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59383; File No. SR–NYSE–2009–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123E (''DMM Combination Review Policy'') To Be More Consistent With the Exchange's Current Designated Market Maker (''DMM'') System

February 11, 2009.

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 January 27, 2009, 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. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it 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 NYSE Rule 123E (''DMM Combination Review Policy'') to be more consistent with the Exchange's current Designated Market Maker (''DMM'') system.

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.

[1] 15 U.S.C. 78s(b)(1).
[2] 15 U.S.C. 78a.
[3] 17 CFR 240.19b–4.
[4] 15 U.S.C. 78s(b)(3)(A).
[5] 17 CFR 240.19b–4(f)(6).

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 NYSE Rule 123E (''DMM Combination Review Policy'') to be more consistent with the Exchange's current Designated Market Maker (''DMM'') system.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Alternext Exchange (formerly the American Stock Exchange).[6]

Background

a. Origination of Review Process

In 1986, the Exchange developed procedures for reviewing proposed mergers, acquisitions and other combinations between or among specialist units.[7] The procedures were the result of a study of significant issues related to the specialist system which concluded, in part, that there would be an increasing incidence of specialist consolidation as specialist units sought to acquire additional capital and resources to meet the growing needs of the market. At that time, the Exchange determined that a structured approach for reviewing proposed specialist combinations was required in order to avoid the formation of specialist units that had capital or operational deficiencies that would negatively impact the Exchange's market and potentially undermine the orderly evolution of the specialist system. The Exchange chose to structure its review based on the degree of concentration of securities in the specialist unit(s). After a pilot program and a series of amendments, the procedures were permanently approved by the Commission in June 1994.[8] The procedures were eventually codified as NYSE Rule 123E in 2002 and subsequently amended.[9]

b. Current NYSE Rule 123E Requirements

On October 24, 2008, the Exchange eliminated the specialist system and created a Designated Market Maker (''DMM'') system.[10] At that time, the Exchange did not substantively amend the review process related to combinations to be consistent with the new DMM system; rather, the provisions of NYSE Rule 123E were carried over to govern DMM combinations.[11] The Exchange expected to turn to appropriate revisions to Rule 123E as soon as possible following the implementation of the DMM system. That work has resulted in this rule proposal.

Currently, pursuant to NYSE Rule 123E, the Exchange is responsible for reviewing proposed DMM combinations, subject to certain considerations, when the proposed DMM unit combination would result in an aggregate of more than five percent (''Tier 1 combination''), 10 percent (''Tier 2 combination'') or 15 percent or more (''Tier 3 combination'') in any one of four concentration measures: (1) Common stocks listed on the Exchange; (2) the 250 most active listed common stocks; (3) the total trading volume of common stock listed on the Exchange; and (4) the total dollar value of common stock listed on the Exchange.

Where a proposed combination involves or would result in a DMM unit accounting for more than five percent of any of the ''concentration measures,'' the Exchange is required to review the proposed combination to take into consideration:

(1) the effects of the proposed combination in terms of the following criteria:

(a) strengthening the capital base of the resulting DMM unit;

(b) minimizing both the potential for financial failure and the negative consequences of any such failure on the DMM system as a whole; and

(c) maintaining or increasing operational efficiencies;

(2) commitment to the Exchange market, focusing on whether the constituent DMM units have worked to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(3) the effect of the proposed combination on overall concentration of DMM units.

Where a DMM unit currently exceeds five percent of any concentration measure, and then proposes a combination that would not result in increasing its concentration measure by more than two percentage points, or not result in the combined unit moving into a higher tier classification, the Exchange shall not review the proposed combination.

When a proposed combination has a concentration percentage of 10% or higher in any of the four measures set forth above, NYSE Rule 123E(c)(1)(a)(i)–(iv) requires the combined entity to prove by a preponderance of the evidence that the proposed combination: (1) Would not create or foster concentration in the DMM business detrimental to the Exchange and its markets; (2) would foster competition among DMM units; (3) would enhance the performance of the constituent DMM unit and the quality of market of stocks involved; and (4) would demonstrate that, if approved, the proposed combination is otherwise in the public interest.

Moreover, pursuant to NYSE Rule 123E(d) proposed combinations that would result in the DMM units accounting for more than 10% of a concentration measure, requires the proponents of the combination to submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the unit's management and operations.[12] The proponents must also submit an acceptable risk management plan with respect to any line of business in which they engage.

If the proposed combination has a concentration percentage greater than 15%, NYSE Rule 123E (c)(1)(b)(i)–(iv) further requires the combined entity to prove that the measures set forth for combination of 10% are satisfied by clear and convincing evidence.

Proposed Amendments to NYSE Rule 123E

The Exchange proposes to amend the DMM Combination review to more clearly define what constitutes a DMM Combination that requires review and approval by the Exchange. The Exchange further seeks to clarify the administrative process associated with that review.

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[6] *See* SR–NYSEALTR–2009–04.

[7] *See* Securities Exchange Release No. 24411, 52 FR 17870 (april 29, 1987)SR–NYSE–86–37).

[8] See Securities Exchange Release No. 35343 (February 8, 1995), 60 FR 8437 (February 14, 1995) (SR–NYSE–94–46).

[9] See Securities Exchange Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31); See Securities Exchange Release No. 47547 (March 20, 2003), 68 FR 15027 (March 27, 2003) (SR–NYSE–2002–41); See Securities Exchange Release No. 52969 (December 16, 2005), 70 FR 76337 (December 23, 2005) (SR–NYSE–2005–38) (amendment to specialist unit capital requirements); See Securities Exchange Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (NYSE–2008–46) (amendment implementing the New Market Model); See Securities Exchange Act Release No. 58857 (October 24, 2008), 73 FR 65435 (November 3, 2008) (SR–NYSE–2008–52) (amendment implementing the new Allocation Policy); See Securities Exchange Act Release No. 59077 (December 10, 2008), 73 FR 76691 (December 17, 2008) (NYSE–2008–127) (technical amendments to correct rule reference to DMM net capital requirements).

[10] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) (SR–NYSE–2008–46) (''New Market Model'').

[11] The Exchange did amend this rule to be consistent with its new Allocation policy on October 24, 2008. *See* Securities Exchange Act Release No. 58857 (October 24, 2008), 73 FR 65435 (November 3, 2008) (SR–NYSE–2008–52).

[12] The initial rationale behind this additional requirement was to minimize the risk of financial and/or operational failure of larger specialist units.

The Exchange proposes to amend NYSE Rule 123E to eliminate the current ''Tier'' system as the mechanism for determining the nature of the review for a proposed DMM combination. At the time the combination review procedures were first adopted in 1986, there were 55 specialist units on the Exchange. The threshold concentration level of five percent in any one of the four concentration measures defined in the Rule was needed to focus on combinations that would have significant impact on the Exchange. Today, there are six DMMs approved to operate on the Exchange; as such, any proposed combination has the potential to have significant impact on the Exchange's ability to maintain its DMM system and provide a fair and orderly market place. Accordingly, the Exchange proposes to eliminate threshold concentration levels as the instigating factor for the Exchange to review a proposed DMM combination. Pursuant to proposed NYSE Rule 123E(a), any ''proposed combination'' must be approved by the Exchange.

Proposed NYSE Rule 123E(b) defines a ''proposed combination'' to include changes to the current DMM unit business that has the potential to have significant impact on the Exchange's market. As such, the Exchange will review when: (1) Two or more DMM units merge or otherwise combine their businesses with the result that the total number of existing DMM units will be reduced; (2) two or more DMM units combine their businesses with the result that the existing number of DMM units is not reduced, but one or more of the surviving units is substantially reduced in size; or (3) a DMM unit merges or otherwise combines with a non-DMM business resulting in a change of control of the existing DMM unit.[13]

The current rule does not specify where the correspondence regarding a proposed combination should be directed. Through this amendment, the Exchange would require the proponents of a proposed combination to direct the correspondence to the Office of the Corporate Secretary.[14] This department will be able to coordinate and facilitate the timely review of the request.

Similar to the current rule, the written submission should address all the factors for review as well as: (1) Performance in any securities received through previous combinations or transfers of registrations during the preceding two years; (2) whether the resulting DMM unit will maintain staffing adequate to the needs of the market place; (3) whether the proposed combined unit will have a real-time surveillance system that monitors DMM trading and uses exception alerts to detect unusual trades or trading patterns; (4) whether the proposed combined unit will have disaster recovery facilities for its computer network and software; (5) whether it has designated specific individuals to handle unusual situations on the Floor (if so, the names of the individuals); (6) whether the combined unit will employ a ''zone'' or other management system on the Floor (with identification of the names of the individuals and their specific responsibilities, as applicable); and (7) whether the combined unit will designate a senior staff member to be responsible for reviewing DMM performance data, with specific procedures for correcting any deficiencies identified.[15]

The Exchange further proposes to rescind the requirement to submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations for proposed combinations as it related to proposed combinations of 10% or higher, as required by NYSE Rule 123E(d).

In 1994, when the rule was amended to add this requirement for proposed combinations of specialist units that would account for more than 10% of a concentration measure, there were approximately 40 specialist units on the Floor. Specialist units at that time were relatively small independent companies. The Exchange believed that the independent certification was necessary to determine whether the combined entity had the managerial and operational capabilities to operate as a larger-sized specialist unit.

Today, the DMM system is comprised of six DMM units, all of which are relatively large, well-capitalized firms. The Exchange believes that the management and operational concerns originally associated with the combination of individual specialist units does not exist today, given the characteristics of the organizations engaged in market making as DMMs, and given the changed nature of the role DMMs play in the current market environment compared with the role played by specialists when this Rule was originally adopted. Furthermore, the Exchange submits that its current rules already address and monitor the management and operational requirements originally contemplated by the performance of an independent consultant and therefore, such outside certification is duplicative and unnecessary.

On July 30, 2007, NASD and NYSE Regulation, Inc. consolidated their member firm regulation operations into a combined organization, FINRA.[16] As part of its duties and responsibilities, FINRA oversees NYSE Member Firm Regulation and carefully reviews organizations seeking membership with FINRA and the NYSE. FINRA and NYSE Consolidated Rules both require that all prospective member organizations comply with the Securities and Exchange Act of 1934 [sic] as well as its rules with regard to the creation and preservation of books and records, the corporate structure of the proposed member organization, the supervision and control, and the net capital requirements of the proposed member organization. Furthermore, these rules require annual audits of the member organization's financial statements by an independent public account and the

[13] The current provisions of NYSE Rule 123E(g)(4) will be deleted and not incorporated in the text of the proposed definition of ''proposed combination.'' NYSE Rule 123E(g)(4) includes as a definition of a DMM combination: ''an individual DMM leaving an existing unit and proposing to take securities with him or her to join another existing unit.'' Securities allocated on the Exchange are assigned to DMM units pursuant to NYSE Rule 103B with an individual employed by the unit assigned as the DMM. As such, the individual DMM on the NYSE is not permitted to take securities with him or her if the DMM becomes employed by another DMM unit. Accordingly, this concept is not being carried over into proposed NYSE Rule 123E. *See* e-mail from Deanna Logan, Managing Director, NYSE Regulation, Inc., to David Liu, Assistant Director, Commission, dated January 30, 2009 (''January 30 e-mail'').

[14] *See* proposed NYSE Rule 123E(c). *See* January 30 e-mail,

[15] *See* proposed NYSE Rule 123E(c).

[16] Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), NYSE, NYSE Regulation, Inc., and NASD entered into an agreement (the ''Agreement'') to reduce regulatory duplication for firms that are members of FINRA and also members of NYSE on or after July 30, 2007 (''Dual Members''), by allocating to FINRA certain regulatory responsibilities for selected NYSE rules. The Agreement includes a list of all of those NYSE and NASD rules for which FINRA has assumed regulatory responsibilities (''Common Rules''). *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include those NYSE rules that FINRA has incorporated into its rulebook (the ''NYSE Incorporated Rules''). *See* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct; File No. SR–NASD–2007–054). Paragraph 2(b) of the 17d–2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

submission of an audited financial and operational report to the Exchange.[17]

The structure and regulatory concerns that accompany applications for membership on the Exchange in today's market have been carefully considered and addressed in the FINRA and NYSE Consolidated Rules. These Rules create a multi-tiered level of review to ensure that requirements related to appropriate managerial and financial capabilities for DMM units are in place from the onset of membership with the Exchange to the approval of members as DMMs.

In addition, NYSE Rule 98 monitors and regulates the member organization's managerial and operational systems. Under NYSE Rule 98, FINRA reviews the managerial aspects of a DMM unit and requires a DMM unit to: (i) Adopt and implement comprehensive written procedures and guidelines governing the conduct and supervision of business handled by such unit; (ii) establish a process for regular review of such written procedures and guidelines; and (iii) implement controls and surveillances reasonably designed to prevent and detect violations of these procedures and guidelines.

Furthermore, NYSE Rule 103 and NYSE Rule 104 regulate a DMM unit's compliance with capital requirements. NYSE Rule 103 sets forth the criteria that an Exchange member must satisfy in order to apply as a DMM unit. For example, the Exchange reviews the member organization's market making ability and the capital available for market making. Specifically, NYSE Rule 103.20 imposes stringent net capital requirements for DMM units and requires the DMM unit to immediately notify the Exchange if it is unable to comply with these prescribed requirements. The Exchange therefore believes that the requirement for an independent, nationally recognized management consulting organization review with respect to all aspects of the proposed combined entity's management and operations is no longer warranted. NYSE Rule 104 sets forth the dealings and responsibilities of DMMs and requires the DMM units to maintain compliance at all times with NYSE and SEC regulations.

The Exchange submits that the FINRA and NYSE Consolidated Rules currently in place appropriately monitor and review organizations seeking initial membership to the Exchange and the ability to operate as a DMM on the Exchange. These Rules operate to ensure continued compliance with protocols required of Exchange members. This new regulatory structure obviates the need for an independent consultant to perform a review of a proposed combination's management and operational efficiencies.

The Exchange further seeks to make consistent the criteria for the Exchange's review of a proposed combination with the requirements for operating a DMM unit. The Exchange will therefore review whether the proposed combined entity will be able to comply with NYSE Rule 103B, Section II[18] as well as the provision of NYSE Rules 98, 103 and 104. Additionally, the Exchange proposes to retain the criteria set forth in the current process and include as part of its review: (1) Whether the proposed combination minimizes both the potential for financial failure and the negative consequences of any such failure on the DMM system as a whole; (2) whether the proposed combination maintains or increases operational efficiencies; (3) the surviving DMM unit's commitment to the Exchange's market; and (4) the effect of the proposed combination on overall concentration of DMM units.[19]

As set forth above, the NYSE has regulations in place to ensure that its members and those members seeking approval as DMM units have the necessary managerial and operational capabilities to operate on the Exchange. Furthermore, these NYSE rules also specifically dictate stringent capital requirements that its members and DMM units are required to maintain in order to comply with NYSE and SEC rules. DMM units that are not capable of meeting these requirements must notify the Exchange immediately and are monitored by the Exchange. Accordingly, the Exchange submits that the retention of the rule requiring an independent consultant to conduct an operational certification regarding a DMM unit's management and operations for proposed combinations would be duplicative and unnecessary since the Exchange has the appropriate procedures and rules in place to regulate its members and DMM units and ensure their compliance with all necessary requirements.

The Exchange's ultimate determination to approve or disapprove a proposed combination will be based upon a determination that the proposed combination has satisfied the criteria set forth in proposed NYSE Rule 123E(d)(1)–(5) and the Exchange determines that the proposed combination would: (1) Not create or foster concentration in the DMM business detrimental to the Exchange and its markets; (2) foster competition among DMM units; and (3) enhance the performance of the constituent DMM unit and the quality of the markets in the securities involved.[20] The Exchange may condition its approval upon compliance by the resulting DMM unit with any steps the Exchange may specify to address any concerns it may have in regard to considerations of the above criteria.

To ensure the fairness of the new process, pursuant to proposed NYSE Rule 123E(f), the Exchange must approve or disapprove a proposed combination within ten (10) business days of the written submission.[21] The Exchange reserves the right to extend its review process if the information submitted by the proponents of the DMM combination is inadequate or requires additional time to review in order for the Exchange to reach a decision.

In any instance where the Exchange does not approve a proposed combination, the proponents of such proposed combination have a right to have such decision reviewed by the Exchange's Board of Directors.

Conclusion

The Exchange believes that the proposed modifications to the Exchange's current administrative procedures relating to the review of a proposed DMM combination, which clarify what constitutes a proposed combination and amend the criteria used to review the proposed combination, are consistent with the current DMM system and will provide a more reasonable review than the current procedures which were predicated on the specialist system and the Exchange's market as they existed in 1994. Moreover, by establishing a deadline for the completion of the review and a right to appeal to the Exchange Board of Directors, the NYSE believes that its process will be fair and

[17] *See, e.g.*, NYSE and FINRA Rules 104, 311, 325–328, 382 and 418.

[18] The Exchange established an allocation system based on a single objective measure to determine a DMM unit's eligibility to participate in the allocation process. *See* Securities Exchange Release No. 58363 (August 14, 2008), 73 FR 49514 (August 21, 2008) (SR–NYSE–2008–52). *See* January 30 e-mail, *supra,* note 11.

[19] The Exchange seeks to eliminate references to certain legacy programs that the Exchange no longer operates. Specifically, NYSE Rule 123E, Supplementary Material. 10(a) refers to participation in a ''FACTS'' program which is no longer maintained by the Exchange.

[20] *See* Proposed NYSE Rule 123E(f). *See* January 30 e-mail, *supra,* note 11.

[21] The Exchange however, reserves the right to extend its review process if the information submitted by the proponents of the combination is inadequate to enable the Exchange to reach a decision.

allow member organizations to properly manage their business initiatives.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),[22] which requires that an exchange have rules that are designed 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. The proposed rule change is consistent with these objectives in that it enables the Exchange to further enhance the process by which it reviews proposed combinations of DMM units. Through the instant filing to make its internal administrative process related to the Exchange review of a proposed DMM combination consistent with the underlying requirements for DMMs and maintaining criteria that fosters the DMM system, the Exchange believes that it is facilitating transactions. Specifically, the Exchange believes that the proposed changes to the DMM combination review process are necessary to facilitate the continuation of its DMM system which allows the Exchange to provide its market participants with a market maker that is responsible for: (i) Providing liquidity to the market when there is a recognized need for additional liquidity; (ii) bridging the gap between supply/demand by purchasing when no one else is buying or selling when no one else is selling; and (iii) overall maintaining a fair and orderly market, that ultimately removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest.

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.

[22] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[25] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing.

The Exchange believes that the instant filing is non-controversial because it amends NYSE Rule123E, which was historically predicated on the specialist system and the Exchange's market as it existed in 1994, to employ simplified criteria to govern a proposed DMM combination. The Exchange believes that such criteria are more consistent with the current DMM system. The Exchange submits that good cause exists to justify waiver of the operative delay in order to allow the Exchange to have an established procedure that is consistent with its new market model. In light of the current economic environment which has witnessed swift consolidations among financial institutions, the Exchange believes that is essential to be equipped with the ability to expeditiously review and approve proposed DMM combinations using criteria that reflects the current operation of the Exchange, thereby maintaining the integrity of the Exchange's DMM systems which ultimately protects investors and the public interest.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

In light of the forgoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[26]

At any time within 60 days of the filing of the 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.[27]

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–2009–07 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–2009–07. 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

[26] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(3)(C).

the Commission's Public Reference Room 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 Number SR–NYSE–2009–07 and should be submitted on or before March 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–3611 Filed 2–19–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In December 2008, there were six applications approved. This notice also includes information on five other applications, one approved in November 2007, another approved in April 2008, another approved in August 2008, and the remaining two approved in November 2008, inadvertently left off the November 2007, April 2008, August 2008, and November 2008 notices, respectively. Additionally, 19 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: The Pennsylvania State University, State College, Pennsylvania.

Application Number: 08–05–C–00–UNV.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $4,139,384.

Earliest Charge Effective Date: February 1, 2009.

Estimated Charge Expiration Date: December 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: Air taxis operating under Part 135.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at University Park Airport.

Brief Description of Projects Approved for Collection and Use:

Install guidance signs (convert runway 16/24 to taxiway J), install guidance signs (runway 6/24), install runway 6/24 distance-to-go signs.

Install security control and access improvements.

Modify terminal building, phase III.

Acquire land for terminal development (Alexander, 31.96 acres).

Construct airport traffic control tower, phase III construction.

Acquire aircraft rescue and firefighting safety equipment and fire suits.

Wildlife assessment.

PFC administration.

Decision Date: November 13, 2007.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Hattiesburg-Laurel Regional Airport Authority, Moselle, Mississippi.

Application Number: 08–06–C–00–PIB.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $252,457.

Earliest Charge Effective Date: October 1, 2008.

Estimated Charge Expiration Date: May 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Purchase handicap loading devices.

Upgrade security access and surveillance equipment.

Decision Date: April 30, 2008.

FOR FURTHER INFORMATION CONTACT: William Shuller, Jackson Airports District Office, (601) 664–9883.

Public Agency: Counties of Colbert and Lauderdale, Muscle Shoals, Alabama.

Application Number: 08–05–C–00–MSL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $120,000.

Earliest Charge Effective Date: April 1, 2009.

Estimated Charge Expiration Date: April 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate runway 18/36.

Rehabilitate runway 11/29.

Acquire aircraft rescue and firefighting vehicle.

Install new heating/air conditioning units.

Decision Date: August 26, 2008.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Jackson Airports District Office, (601) 664–9886.

Public Agency: County of Sacramento, Sacramento, California.

Application Number: 08–08–C–00–SMF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $603,497,524.

Earliest Charge Effective Date: July 1, 2011.

Estimated Charge Expiration Date: February 1, 2028.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Terminal modernization program.

Determination: The proposed security facilities were determined to be ineligible because the public agency failed to provide documentation of concurrence from the Transportation Security Administration. In addition, offices associated with the federal inspection services facility and the proposed hotel landscaping did not meet the requirements of § 158.15(b) and, thus, were found ineligible. The proposed engineering, design, construction administration, and other ''soft costs'' were found ineligible because the public agency failed to provide sufficient information to allow the FAA to determine eligibility. Finally, the public agency listed ''contingencies and escalation for inflation'' in its PFC application however, these types of costs are not PFC-eligible.

Decision Date: November 26, 2008.

FOR FURTHER INFORMATION CONTACT: TJ Chen, San Francisco Airports District Office, (650) 876–2778, extension 625.

[28] 17 CFR 200.30–3(a)(12).