



## **Compensation in Relation to Exchange System Failure – Rule 18**

### **Key provisions for submission of this claim form:**

- The financial loss is connected to an NYSE system malfunction. The term “system malfunction” means a malfunction of the NYSE’s physical equipment, devices, and/or programming that results in an incorrect execution of an order or no execution of an order that was received in NYSE systems.
- The member organization has sustained a net loss in the amount of **\$500** or more.

### **Member organizations wishing to submit a Compensation Claim should:**

- Orally notify the NYSE Floor Operations department of the suspected system failure as soon as possible, but in all cases prior to the opening of trading on the trading day following the incident giving rise to the claim.
- Submit written notification of the suspected system failure within three (3) business days of incident. The written notification should detail the nature of the loss resulting from the system malfunction, the amount of such loss and any steps taken by the member organization to mitigate or offset the loss incurred.
- Pursuant to Rule 18(d), the “Compensation Review Panel will determine whether the amount claimed should be reduced based on the actions or inactions of the claiming member organization, including whether the member organization made appropriate efforts to mitigate its loss.” Accordingly, claimants are urged to provide sufficient supporting documentation including any records of error, suspense or other account used to process and/or clear a covering trade.
- Payments may be applied against monies in arrears to the NYSE or NYSE Amex.

### **Please submit all supporting documentation and completed Compensation Claim form:**

- in person directly to Floor Operations personnel on the Executive ramp, or
- via email: [nyseclaims@nyx.com](mailto:nyseclaims@nyx.com), or
- by mail to: NYSE Compensation Claims, 11 Wall Street, 15<sup>th</sup> Floor, New York, NY 10005, Attn: Ms. Deborah Marucci

Questions may be directed to:

Paul Bauccio, Senior Vice President, Floor Operations (212) 656-2929

Sonia Rosa, Director, Floor Operations (212) 656-2899

## COMPENSATION IN RELATION TO EXCHANGE SYSTEM FAILURE CLAIM FORM

Point of Contact for your firm	Claimant Name: Member Firm Name: Address:  Phone #: e-mail:
System(s) Involved:	
Trade Date and time of event:	
NYSE Staff Person contacted: Date and time of contact:	
Date of Claim:	
Net Loss: <i>(Min. \$500)</i>	
Order detail  (List additional orders if any on back of this form)	BBSS Agency / Display Book / Other _____ Firm: Branch: Sequence: Turnaround number: Time: Buy / Sell: Quantity: Security: Price: Reports received:
Covering trade detail	Date: Turnaround number: Time: Price(s):
State reason for claim:	

Additional Order detail	BBSS Agency / Display Book / Other _____ Firm: Branch: Sequence: Turnaround number: Time: Buy / Sell: Quantity: Security: Price: Reports received:
Covering trade detail	Date: Turnaround number: Time: Price(s):
Additional Order detail	BBSS Agency / Display Book / Other _____ Firm: Branch: Sequence: Turnaround number: Time: Buy / Sell: Quantity: Security: Price: Reports received:
Covering trade detail	Date: Turnaround number: Time: Price(s):

Pursuant to Rule 18(d), the “Compensation Review Panel will determine whether the amount claimed should be reduced based on the actions or inactions of the claiming member organization, including whether the member organization made appropriate efforts to mitigate its loss.” Accordingly, claimants are urged to provide sufficient supporting documentation including any records of error, suspense or other account used to process and/or clear a covering trade.

Payments may be applied against monies in arrears to the NYSE or NYSE Amex.



Number 07-103  
October 23, 2007

**ATTENTION:** TRADING AND COMPLIANCE

**TO:** ALL MEMBERS AND MEMBER ORGANIZATIONS

**SUBJECT:** COMPENSATION FOR NYSE SYSTEM FAILURES - AMENDED NYSE RULE 18

## I. Purpose

The purpose of this Information Memo is to advise members and member organizations that the NYSE has amended NYSE Rule 18 to reduce the dollar amount required in order for a member organization to seek compensation in the event of an Exchange System failure.<sup>1</sup>

NYSE Rule 18, originally implemented on July 17, 2007, established a process for members to seek reimbursement for losses resulting from NYSE system failures.<sup>2</sup> This memo describes what errors qualify for reimbursement and the process for submitting claims.

## II. Background

Pursuant to Exchange Rule 17, the Exchange is not liable for any damages sustained by a member, allied member or member organization growing out of the use or enjoyment by such member, allied member or member organization of the facilities afforded by the Exchange, except as provided in the rules.”

The Exchange recognizes that the current industry practice of exchanges that function as SROs is to provide a form of compensation for losses sustained in relation to the use of the company’s systems. As such, the Exchange adopted Exchange Rule 18 in order to conform to current industry practice. The adoption of Exchange Rule 18 further acknowledges that systems malfunctions can have a commensurately larger impact than in the past as a result of increased automatic execution with with the

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<sup>1</sup> See SR-NYSE-2007-95 (October 11, 2007).

<sup>2</sup> The operation of the rule was retroactive to September 2006. See Securities Exchange Act Release No.55555 (March 27, 2007), 72 FR 16841 (April 5, 2007) (SR-NYSE-2007-09).

implementation of the HYBRID MARKET<sup>SM</sup>, and Regulation NMS. In recognition of this shift, the NYSE decided to implement a process for providing financial compensation to member organizations when a loss is sustained in relation to an NYSE system failure. To implement this new process, the NYSE adopted Rule 18. The amended rule and related procedures are described below.

### III. NYSE Rule 18

#### A. Overview

Under NYSE Rule 18, as originally approved, if there is an NYSE system malfunction, a member organization could submit to the NYSE a claim for compensation (referred to in this memo as a “Compensation Claim”) for any resultant net loss incurred by the member organization equal to or greater than \$5,000. As amended, the new minimum loss threshold is \$500. The NYSE allocates \$500,000 per calendar month (the “Monthly Allotment”) for payment of approved Compensation Claims. As further described below, an additional amount (the “Supplemental Funds”) may be added to the Monthly Allotment and used for the payment of Compensation Claims.

Compensation Claims are reviewed by a Compensation Review Panel, consisting of three NYSE Floor Governors and three NYSE employees. The Compensation Review Panel has the power to approve or deny claims, which will be paid in full or, if the total amount of all approved claims exceeds the Monthly Allotment (and Supplemental Funds, where applicable), on a *pro rata* basis.

#### B. Determining Whether a Member Organization has a Claim.

Compensation Claims under amended NYSE Rule 18 may be made only where the circumstances of the claim meet both of the conditions below:

- The loss is connected to an NYSE system malfunction
  - The term “system malfunction” means a malfunction of the NYSE’s physical equipment, devices and/or programming that results in an incorrect execution of an order or no execution of an order that was received in NYSE systems.
  - Malfunctions in a member organization’s own connectivity to the Exchange, or in a member organization’s physical equipment, devices or programming, that proximately cause the member organization’s losses (either by failing to properly enter and process orders or by entering erroneous orders) are not system malfunctions within the meaning of NYSE Rule 18.
- The member organization has sustained a net loss in the amount of \$500 or more.
  - A “net loss” is calculated by subtracting any profits received in relation to the same system failure incident that is the subject of the compensation claim.
  - Claims must be submitted on a per-incident basis, meaning that member organizations may not aggregate losses relating to multiple incidents into a single claim, and may not net profits and losses incurred as a result of separate incidents.

Please note that Compensation Claims that do not meet the above criteria may not be submitted for consideration for reimbursement.

### C. Submitting a Compensation Claim

Member organizations wishing to submit a Compensation Claim should follow the following procedure:

- Verify internally that the Compensation Claim meets the criteria described above, including offsetting profits.
- Orally notify the NYSE Floor Operations department of the suspected system failure as soon as possible, but in all cases prior to the opening of trading on the trading day following the incident giving rise to the claim.
- Submit written notification of the suspected system failure within three (3) business days of the incident. The written notification should detail the nature of the loss resulting from the system malfunction, the amount of such loss and any steps taken by the member organization to mitigate or offset the loss incurred.

NYSE Floor Operations staff will verify the validity of all Compensation Claims by verifying that (1) one or more valid order was accepted into NYSE systems, and (2) an NYSE system failure occurred during the execution or handling of the order(s).

### D. Operation of the Compensation Review Panel

Compensation Claims that have been verified by NYSE Floor Operations will be reviewed by a Compensation Review Panel consisting of three NYSE Floor Governors and three NYSE employees. Claims will be reviewed and processed at the end of each calendar month.

The panel will determine whether the Compensation Claim satisfies all of the criteria for reimbursement, and the amount to be paid on each claim. In making its decision, the panel will also review the actions taken by the member organization and its employees before, during and after the system malfunction to determine if any of such actions contributed to the loss incurred, and whether the member organization took appropriate steps to mitigate its loss. The panel may increase or reduce the amount the claim as a result of this review.

All decisions of the Compensation Review Panel will be made by a majority vote, with ties decided by the NYSE Euronext Chief Executive Officer (or his designee) after a review of the relevant facts. All decisions of the Compensation Review Panel (including tie-breaking decisions) are final.

If the total amount of approved Compensation Claims in a given month exceeds the Monthly Allotment and any Supplemental Funds, all approved Compensation Claims will be paid on a *pro rata* basis.

### E. Monthly Allotment and Supplemental Funds

As noted previously, the NYSE allocates \$500,000 for each calendar month (the Monthly Allotment) for the payment of approved Compensation Claims. In any month where less than \$250,000 of the Monthly Allotment is used to pay approved Compensation Claims, \$50,000 (the Supplemental Funds) will be carried forward into a

supplemental fund that may be used to pay approved Compensation Claims in subsequent months. Please note that Supplemental Funds will only be used after the entire Monthly Allotment has been exhausted. Supplemental Funds that are not used will continue to roll-over into subsequent months until such funds are exhausted.

NYSE management will periodically review the amount of the Monthly Allotment, the amount from each Monthly Allotment that may be moved into the Supplemental Funds, and the maximum amount that may accrue in the Supplemental Funds to ensure that these amounts remain appropriate, or to amend NYSE Rule 18 as necessary to change such amounts.

#### **IV. Staff Contacts**

Questions regarding this Information Memo should be directed to:

Deanna Logan, Director, Rule Development, 212-656-2389

Questions regarding the operation of new NYSE Rule 18 or concerning potential NYSE systems malfunctions should be directed to:

Paul Bauccio, Director, NYSE Operations, 212-656-2929.

Questions may also be direct to the On-Floor Surveillance Unit via the White Phone or in person at their booth in the EBR. Questions that are not time-sensitive may be submitted to Ask Market Surveillance. (For information about the Ask Market Surveillance system, refer to Member Education Bulletin 2006-3, which was issued on January 30, 2006, if you or your firm is not already a subscriber.)

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John F. Malitzis  
Senior Vice President  
Market Surveillance