

# Memorandum



**To:** NYSE Member Organizations      **Date:** February 21, 2007  
**From:** Louis Pastina                      **Re:** Solicitation of Claims in Anticipation of  
Commission Approval of Proposed Rule 18

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The Exchange has filed with the Securities and Exchange Commission (“SEC” or “Exchange”) a proposal to adopt new Rule 18 (“Compensation in Relation to Exchange System Failure” hereinafter the “proposed rule”) in order to establish a procedure to compensate member organizations in relation to Exchange system failures.

Pursuant to the proposed rule a member organization would be eligible to submit a claim to the Exchange for compensation in the event the Exchange’s physical equipment, devices and/or system programming malfunction and such malfunction results in an incorrect execution of an order or no execution of an order that was received in Exchange systems. Misuse of Exchange systems and delays in order processing as a result of large volume, commonly known as “queuing,” are not eligible for claims.

Member organizations will be eligible to file claims for compensation pursuant to the proposed rule when:

1. the Exchange’s Division of Floor Operations determines that a valid order was accepted by the Exchange’s systems;
2. an Exchange system failure, as defined above occurred during the execution of said order;
3. the member organization sustained a loss related to an Exchange system failure;
4. the net loss was at least \$5,000; and
5. the Exchange’s Division of Floor Operations received from the member organizations that sustained such loss, verbal notice by the market opening on the next business day following the system failure and written notice by the end of the third business day following the system failure (T+3).

The Exchange further proposed to have the rule operate retroactively to September 1, 2006 thus waiving criteria 5 above for the period September 1, 2006 until SEC approval of the proposed rule.

In anticipation of Commission approval and in order to expedite the processing of claims for losses sustained between September 1, 2006 and the rule’s approval, the Exchange requests that member organizations that intend to avail themselves of the proposed rule for that time period provide the NYSE Division of Floor Operations with all relevant documentation of its claims

commencing upon receipt of this notice. Such documentation may include, but is not limited to information requested on the attached claim form. Please submit all documentation and claim forms: **in person:** directly to Floor Operations personnel on the Executive Ramp, **or via e-mail:** nyseclaims@nyse.com, **or mailing address:** NYSE Compensation Claims, 11 Wall St., 15<sup>th</sup> Floor, New York, NY 10005, Attn: Deborah Marucci.

It is understood that should the Exchange fail to obtain Commission approval for the proposed rule filing, the Exchange, pursuant to Rule 17 shall not be 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 otherwise provided in Exchange rules.

Questions may be directed to:

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