

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58311; File No. SR-NYSE-2008-74)

August 5, 2008

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC to Enable the Exchange to Waive Annual Listing Fees for Securities Transferring from the Amex or NYSE Arca, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 4, 2008, the New York Stock Exchange LLC (“NYSE” 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to provide that, with retroactive effect from January 1, 2008, there shall be no annual fee payable to the Exchange for the remainder of the calendar year in which the transfer occurs for any class of securities of a company listed on the American Stock Exchange (the “Amex”) that transfers the listing of its primary class of common shares to the Exchange. This proposed rule change (i) is conditioned on the consummation of NYSE Euronext’s acquisition of the Amex (the “Merger”), (ii) will not take effect until the date of consummation of the Merger, and (iii) will be of no further effect if the closing of the Merger does not take place by March 31, 2009. The amendment also provides that companies transferring the listing of their primary class of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

common stock from NYSE Arca, Inc. (“NYSE Arca”) to the Exchange (with respect to which the Exchange already waives annual fees for the first part year) will not be charged the prorated annual fee in the first year of listing for any class of securities that is transferred in connection with the transfer of the common stock.

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 these statements may be examined at the places specified in Item IV below. The NYSE 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

The Exchange proposes to amend Section 902.02 of the Manual to provide that, with retroactive effect from January 1, 2008, there shall be no annual fee payable to the Exchange for the remainder of the calendar year in which the transfer occurs for any class of securities of a company listed on the Amex that transfers the listing of its primary class of common shares to the Exchange. This proposed rule change (i) is conditioned on the consummation of Merger, (ii) will not take effect until the date of consummation of the Merger, and (iii) will be of no further effect if the closing of the Merger does not take place by March 31, 2009. The amendment also provides that companies transferring the listing of their primary class of common stock from NYSE Arca to the Exchange (with

respect to which the Exchange already waives annual fees for the first part year) will not be charged the prorated annual fee in the first year of listing for any class of securities that is transferred in connection with the transfer of the common stock.

NYSE Euronext, the ultimate parent company of the Exchange, has agreed to acquire the Amex pursuant to an Agreement and Plan of Merger, dated as of January 17, 2008. It is currently anticipated that the acquisition will be consummated during the third quarter of 2008.³ In connection with the acquisition, the Exchange anticipates that some Amex-listed companies that qualify for listing on the Exchange may choose to transfer their listing to the Exchange. Consequently, subject to consummation of the Merger, the Exchange proposes to amend Section 902.02 of the Manual to grant companies transferring the listing of their primary class of common shares and any other class of securities to the Exchange from the Amex a waiver of the prorated annual listing fee that would normally be payable in connection with the first partial calendar year of listing on the Exchange. The Exchange believes this is appropriate as companies transferring to the Exchange from the Amex will already have paid annual continued listing fees to the Amex for the calendar year in which they transfer. Some companies may choose to transfer from the Amex to the Exchange in advance of the consummation of the acquisition. As such companies will be making their transfer decisions in expectation of the Merger, the Exchange believes that they should not be penalized for transferring

³ The members of the Amex voted to approve the transaction on June 17, 2008. No vote of the NYSE Euronext shareholders is required. The sole remaining condition to the consummation of the transaction is the approval by the Division of Trading and Markets of certain rule filings in connection with the Merger that have been submitted by the NYSE and Amex. After the Merger, the Amex will be renamed NYSE Alternext US LLC. The rule text included in Exhibit 5 reflects this name change.

before the closing date. Consequently, the Exchange believes that it is appropriate to apply the fee waiver retroactively to all companies that transfer to the Exchange from the Amex during the portion of the year in which the Merger is consummated prior to such consummation.

The Exchange believes this fee waiver is not unfairly discriminatory and does not constitute an inequitable allocation of fees, in particular because, after the Merger, NYSE Regulation, Inc. (“NYSE Regulation”) will perform listed company regulation for both the Exchange and NYSE Alternext US, including a substantial review of companies upon original listing. Many of the regulatory staff who currently perform initial and continued listing reviews at the Amex will become employees of NYSE Regulation at the time of the Merger and will continue to perform the same duties with respect to NYSE Alternext US companies after the Merger. Companies transferring from NYSE Alternext US will be subjected to the same rigorous regulatory review as any other applicant for listing on the Exchange. However, the Exchange expects that, on average, the review of companies transferring from NYSE Alternext US to the Exchange will be less costly than the review of a transfer from an unaffiliated market, as the Amex listing regulatory staff that will have been absorbed by NYSE Regulation will already have performed a substantial review of any NYSE Alternext US listed company and NYSE Regulation will be able to rely on that prior work as a baseline in qualifying the company for listing on the Exchange and in conducting ongoing compliance activities with respect to those companies.

The Exchange also believes that waiving, subject to consummation of the Merger, the prorated annual fees applicable to any Amex security transferred to the NYSE prior to

the Merger is not unfairly discriminatory or an inequitable allocation of fees. Specifically, the Exchange believes that the proposed fee waiver will not impact its ability to devote the same level of resources to its oversight of the companies that benefit from the waiver as it does for other listed companies or, more generally, impact its resource commitment to its regulatory oversight of the listing process or its regulatory programs. The Exchange notes that, after consummation of the Merger, the annual fee revenue paid by companies to the Amex prior to the Merger will be available to NYSE Regulation to finance its regulatory activities in relation to Amex-listed companies, regardless of whether such companies remain on NYSE Alternext US or have chosen to transfer their listing to the NYSE at some point during the year either before or after the Merger. As such, collecting annual fees from companies upon transfer from the Amex to the NYSE would constitute a double billing of those companies for the regulatory expenses incurred by NYSE Regulation in relation to those companies during the year of transfer.

Section 902.02 currently provides that any company transferring the listing of its primary class of common equity securities from NYSE Arca to the Exchange will not be charged any annual fees in connection with the first partial year of listing on the Exchange. Consistent with the Exchange's proposed approach to waiving annual fees for all securities transferred from NYSE Alternext US concurrent with the transfer of an issuer's common stock, the Exchange proposes to extend the fee waiver described in the immediately preceding sentence to the prorated annual fees that would otherwise be payable with respect to any other class of securities that an issuer is transferring to the Exchange from NYSE Arca in conjunction with its transfer of its common stock. The

Exchange believes this waiver is appropriate in light of the fact that the Exchange and NYSE Arca share a common parent and, without the waiver, NYSE Euronext would be collecting two separate annual fees in relation to such securities. In addition, the same staff from NYSE Regulation are responsible for compliance review of all securities listed on both markets and their prior experience with any securities transferring from NYSE Arca will significantly lessen the burden and costs associated with continued compliance review of those securities once they have been transferred to the NYSE. Specifically, the Exchange believes that the proposed fee waiver will not impact its ability to devote the same level of resources to its oversight of the companies that benefit from the waiver as it does for other listed companies or, more generally, impact its resource commitment to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)⁴ that an Exchange have rules that are designed to promote just and equitable principles of trade, 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 Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory because it is simply a recognition of the fact that companies transferring their listing from NYSE Alternext US or NYSE Arca will already have paid fees to another exchange which, in the case of NYSE Arca, is currently under common ownership with the Exchange, and, in the case of NYSE Alternext US will, upon

⁴ 15 U.S.C. 78f(b)(5).

consummation of the acquisition, be under the same ownership as the Exchange. The Exchange believes that the fee waiver is not unfairly discriminatory and does not constitute an inequitable allocation of fees because the same regulatory staff will review securities on all three markets and the Exchange will therefore benefit from regulatory efficiencies arising out of NYSE Regulation's prior examination of any companies that transfer. The Exchange believes that the application of the waiver to companies transferring to the NYSE from Amex prior to the Merger is not unfairly discriminatory and does not constitute an inequitable allocation of fees because the annual fee revenue collected by the Amex from these companies will be available to NYSE Regulation to finance its regulatory oversight of those companies after the Merger.

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 purpose of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on 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 the self-regulatory organization consents, the Commission will:

- (A) by order approve the 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-74 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2008-74. 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. 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-2008-74 and should be submitted by [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Florence E. Harmon
Acting Secretary

⁵ 17 CFR 200.30-3(a)(12).