

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55421; File No. SR-NYSE-2007-19)

March 8, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Waive Certain Listing Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 22, 2007, 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comment 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 Section 902.02 of its Listed Company Manual (the “Manual”) to provide that there shall be no initial listing fee applicable to (i) any company listing upon emergence from bankruptcy, or (ii) any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act. The amendment will also apply a separate cap for a limited period on fees payable by companies listing upon emergence from bankruptcy. If approved by the Commission, the amendments contained in this proposal will be applied retroactively as of the date of this filing.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

In its filing with the Commission, NYSE 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 Exchange 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 there shall be no initial listing fee applicable to:

- any company listing following emergence from bankruptcy;<sup>3</sup> or
- any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act.

The amendment will also apply a separate cap for a limited period on fees payable by companies listing upon emergence from bankruptcy. If approved by the Commission, the amendments contained in this proposal will be applied retroactively as of the date of this filing.

Section 902.02 currently provides a cap of \$500,000 for all fees (including both initial listing fees and annual fees) payable by any issuer during a calendar year. Under the proposed amendment, the total fees payable by an issuer that lists upon emergence from bankruptcy will be subject to a separate fee cap. Annual fees for any such issuer will be calculated quarterly for

---

<sup>3</sup> The Exchange interprets "listing following emergence from bankruptcy" to mean that the company lists at the same time it emerges from bankruptcy. Telephone conversation between John Carey, Assistant General Counsel, NYSE, and Nathan Saunders, Special Counsel, Division of Market Regulation, Commission, March 6, 2007.

the fiscal quarter in which such issuer lists and in each of the succeeding 12 full fiscal quarters, at a rate of one-fourth of the applicable annual fee rate. The total fees (including initial listing fees and annual fees) that may be billed to such issuer during this period will be subject to a \$25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. This fee cap will subject to the same exclusions that apply in relation to the \$500,000 per year fee cap described in Section 902.02 under the heading “Total Maximum Fee Payable in a Calendar Year.” If there are one or more fiscal quarters remaining in the year after the conclusion of the period described in this paragraph, the issuer will, on a prorated basis, be billed the regular annual fee subject to the \$500,000 total fee cap for the remainder of that year.

The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Specifically, companies that benefit from the waivers will be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

In the case of companies listing upon emergence from bankruptcy, the Exchange believes that the initial listing fee waiver and proposed separate fee cap are justified by such companies' unique circumstances. Companies emerging from bankruptcy are typically not raising any new capital at the time of listing, so the payment of initial listing fees is more burdensome than for companies that are listing upon an initial public offering. Also, because of the desire in bankruptcy proceedings to ensure that creditors are paid as much as possible, such companies are much more sensitive to both the initial and continued costs associated with listing. It is frequently difficult for such companies to assess what those costs are going to be until quite close

to their emergence from bankruptcy, as the number of shares that will be issued (and therefore the related listing fees) are a significant variable in the negotiation of the bankruptcy settlement. As (a) bankrupt companies face unique challenges in the listing process, (b) the number of companies that will benefit from the fee waiver and lower fee cap applicable to bankrupt companies will be very limited, and (c) the fee cap will apply only to a three-year transitional period, the Exchange does not believe that the treatment this proposal would afford to bankrupt companies constitutes an inequitable or unfairly discriminatory allocation of fees.

The Exchange anticipates that a significant percentage of potential listings of companies that have a registered class of common stock but that are not currently listed on a national securities exchange will be formerly listed companies that were delisted as a result of a failure to timely file annual reports with the Commission. These are companies that were otherwise in good standing with the Exchange or with another national securities exchange, but fell behind on their reporting obligations under the Act because their auditors or the Commission required restatements of their financial statements. These companies will re-list on the Exchange as soon as their filings are up to date. The Exchange believes that waiving initial listing fees for these companies is appropriate and does not constitute an inequitable or unfairly discriminatory allocation of fees, as such companies had previously paid initial listing fees to the Exchange or to another national securities exchange, and to make them pay these fees again would further penalize them unnecessarily.

The Exchange does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. A very limited number of companies are qualified and seek to list on the Exchange that are either emerging from bankruptcy or have a registered class

of common stock but are not currently listed on another market. Accordingly, the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(4)<sup>4</sup> of the Act that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirement under Section 6(b)(5)<sup>5</sup> of Act that an exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and that are not designed to permit unfair discrimination between issuers. In light of the unique circumstances of companies emerging from bankruptcy and the likelihood that many companies listing that have a registered class of common stock but are not listed on another market will be previously listed companies delisted as late filers, the Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory.

### 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

Written comments on the proposed rule change were neither solicited nor received.

---

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

### 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 Exchange 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-19 on the subject line.

#### Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2007-19. 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. 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-2007-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>6</sup> 17 CFR 200.30-3(a)(12).