

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52463; File No. SR-NYSE-2005-35)

September 16, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Changes to Listed Company Manual Section 902.00 Regarding Listing Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 18, 2005, the New York Stock Exchange, Inc. (“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 NYSE. On July 29, 2005, NYSE filed Amendment No. 1 to the proposed rule change.³ On August 16, 2005, NYSE filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed rule filing proposes a number of changes to the current fee chapter set out in Sections 902.01 to 902.04 of the Listed Company Manual. In addition, the Exchange is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange clarified and supplemented certain aspects of its proposal. Amendment No. 1 supplements the information provided in various sections of the Exchange’s Form 19b-4.

⁴ In Amendment No. 2, the Exchange made technical and clarifying changes to its proposal. Amendment No. 2 supplements the information provided in various sections of the Exchange’s Form 19b-4. The Commission has made minor technical changes to this notice with Nasdaq’s consent. Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and John Carey, Assistant General Counsel, NYSE, on August 19, 2005.

proposing a reorganization of the relevant sections of the Listed Company Manual into a clearer and more concise format setting out fees by type of listed security.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Listed Company Manual

* * * * *

902.00 [Listing] Fees for Listed Securities

902.01 Listed[ing] Securities Fee Agreement[, Current Form]

Each Listing Application submitted to the Exchange should must be accompanied by a Listed Securities Fee Agreement, in which the Company undertakes to pay Listing Fees and Annual Fees, unless such an agreement in the form shown below has previously been filed with the Exchange.

AGREEMENT made this day of 20..... by
..... organized and existing under the laws of the State of
..... (hereinafter called the “Company”) with the New York Stock Exchange, Inc.
(hereinafter called the “Exchange”).

WITNESSETH:

I. WHEREAS the Company has applied for the listing upon the Exchange of:

.....
.....

2. WHEREAS it is a condition precedent to the consideration of listing applications that this fee agreement be in effect between the Company and the Exchange covering the payment of Listing Fees [initial] and [continuing] A[a]nnual F[f]ees.

NOW, THEREFORE, in consideration of the Exchange receiving and considering the application for the listing of the aforementioned securities, and subsequent applications, if any, for the listing of additional shares of such securities and/or other securities of the Company, the Company covenants and agrees to pay, when due, any applicable L[l]isting F[f]ees and Annual Fees established from time to time by the Exchange.

IN WITNESS WHEREOF, the Company has caused these presents to be executed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed, as of the day and year first above written.

.....
by
(Name and Title)

902.02 GENERAL INFORMATION ON FEES

There are two types of fees applicable to listed issuers - Listing Fees and Annual Fees. All fees are payable upon receipt of invoice. This chapter sets out fees by type of security, with different fees applicable to equity securities, closed-end funds, structured products (defined as securities listed under Sections 703.18, 703.19 and 703.21), short-term securities (defined as securities

having a term of seven years or less), investment company units listed under Section 703.16 and debt securities.

Listing Fees

Listing Fees are billed for each security listed at the time an issuer first lists on the Exchange, each subsequent time a new class of security is listed, or at any subsequent time that additional shares of a listed security are issued. Listing Fees are based on the number of shares issued and outstanding and are calculated separately for each class of security listed. Treasury stock, restricted stock and shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares an issuer is billed for at the time the class of security is first listed.

Timing of Listing Fees for Subsequent Issuances

To the extent that an issuer submits a supplemental listing application for shares that are immediately issued, such as in connection with a merger or acquisition, stock split or stock dividend, Listing Fees for those shares are billed at the time the supplemental listing application is processed.

To the extent that an issuer submits a supplemental listing application for shares that are not issued at the time of listing, such as for an equity compensation plan or for convertible securities where the listed securities will be issued over time, only the applicable minimum supplemental listing application fee will be billed at the time the supplemental listing application is processed.

Listing Fees will accrue on these securities as of the date of issuance and the accrued Listing Fees will be billed at the beginning of the following year along with the issuer's Annual Fees.

Calculating Listing Fees

Generally, when an issuer lists a new class of equity securities, a structured product or a short-term security, Listing Fees are calculated according to Listing Fee schedules that set a per share rate based on the number of shares issued and outstanding. When a closed-end fund, however, first lists on the Exchange, Listing Fees are not calculated at a per share rate but are, instead, based on a range of fixed Listing Fees set according to the total number of shares issued and outstanding at the time of listing.

For all listed securities, Listing Fees for subsequent listings of additional shares are calculated starting at the rate applicable to the number of shares already listed and outstanding (including treasury stock and restricted stock). Listing Fees for additional issuances are calculated according to the applicable Listing Fee schedule on a per share rate, subject to a minimum application fee.

U.S. Issuers

For all issuers other than those that meet the SEC's definition of foreign private issuer, Listing Fees are calculated for each separate class being listed based on the total number of shares issued and outstanding at the time of listing. In this chapter, such issuers are referred to as "U.S. issuers."

Foreign Private Issuers

For issuers that satisfy the SEC's definition of foreign private issuer, Listing Fees are calculated for each separate class being listed based on the number of shares issued and outstanding in the United States at the time of listing.

Annual Fees

Annual Fees are calculated for each class or series of security listed based on the number of shares issued and outstanding, including treasury stock and restricted stock. In its first year of listing, an issuer is billed at the time of listing for Annual Fees that are prorated from the listing date through the end of the year. At the beginning of each subsequent year, the Exchange will invoice issuers for Annual Fees applicable to that year.

Calculating Annual Fees

Annual Fees are calculated on a per share basis subject to a minimum fee. The Annual Fee is equal to the greater of the minimum fee and the fee calculated on a per share basis.

U.S. Issuers

In order to calculate a U.S. issuer's Annual Fees for each class of security listed, the Exchange will include all issued and outstanding shares of that class as of December 31 of the previous year. The Exchange obtains information on the number of securities issued and outstanding from each issuer's transfer agent.

Foreign Private Issuers

In order to calculate a foreign private issuer's Annual Fees, the Exchange will calculate a four-quarter average of securities issued and outstanding in the United States during the preceding year. The quarterly average serves to recognize the possibility of flow-back and flow-in of securities to and from the home country market and more reasonably reflect the number of securities in the United States over the course of the year. The Exchange obtains information on the number of securities issued and outstanding in the United States, including securities registered in the United States and securities held through any U.S. nominee, from each issuer's transfer agent and/or ADR depository bank.

To the extent that an issuer that is being billed as a foreign private issuer has a change in status that requires the issuer to commence filing U.S. periodic and annual reports with the SEC during the course of a year, the Exchange will bill that issuer as a U.S. issuer at the beginning of the first calendar year following the issuer's change in status. An issuer that changes its status is not subject to new Listing Fees for worldwide securities already issued and outstanding.

Total Maximum Fee Payable in a Calendar Year

The total fees that may be billed to an issuer in a calendar year are capped at \$500,000. The fee cap includes most Listing Fees and Annual Fees. The fee cap, however, does not include the following fees:

- Listing Fees and Annual Fees for Investment Company Units
- Listing Fees and Annual Fees for closed-end funds;
- Listing Fees for structured products; and

- Annual Fees for structured products other than retail debt securities.

The term “retail debt securities” refers to debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange.

In the case of transactions involving listed issuers (such as the consolidation of two listed issuers into a new issuer, a merger between a listed issuer and an unlisted issuer where the unlisted issuer survives or a new issuer is formed, or a merger between two listed issuers where one listed issuer survives), all Listing Fees and Annual Fees paid by listed issuers party to the transaction in the year, and up to the date, that the transaction concludes will be counted towards calculating the Total Maximum Fee for the ultimate listed issuer in the year of the corporate transaction.

In the case where the ultimate listed issuer was previously unlisted, however, Listing Fees and Annual Fees paid by any listed issuer party to the transaction will only be calculated towards the Total Maximum Fee for the ultimate listed issuer if such issuer lists on the Exchange at the time the transaction concludes.

Refunds of Fees

Listing Fees and Annual Fees are non-refundable.

Cancellation, Retirement or Redemption of Securities

An issuer must promptly advise the Exchange of the cancellation, retirement or partial or full redemption of listed securities. The resulting decrease in the number of securities outstanding does not reduce the fees an issuer has already paid, but will impact future billings.

902.03 FEES FOR LISTED EQUITY SECURITIES

The Listing Fees and Annual Fees set out in this section apply to listings of common and preferred equity securities by U.S. issuers and foreign private issuers. However, the fees in this section do not apply to listings of securities issued by closed-end funds, or to structured products, short-term securities, or debt securities. Fees applicable to such securities are described in Sections 902.04, 902.05, 902.06 and 902.07, respectively.

Listing Fees

Listing Fee Schedule

When determining Listing Fees, calculations are made at each level of the schedule up to and including the last level applicable to the number of shares being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. For examples of how Listing Fees are calculated, please see “Calculating Listing Fees” below. The Listing Fee schedule for equity securities is as follows:

<u>Number of Securities Issued</u>	<u>Fee Per Share</u>
<u>Up to and including 75 million</u>	<u>\$0.0048</u>
<u>Over 75 million up to and including 300 million</u>	<u>\$0.00375</u>
<u>Over 300 million</u>	<u>\$0.0019</u>

The first time that an issuer lists a class of common shares, the issuer is also subject to a one-time special charge of \$37,500, in addition to fees calculated according to the Listing Fee schedule.

Listing Fees for the following types of listings are also calculated under the Listing Fee Schedule:

- At the time it first lists, an issuer lists one or more classes of preferred stock or warrants, whether or not common shares are also listed at that time;
- Once listed, an issuer lists additional shares of a class of previously listed securities; or
- Once listed, an issuer lists a new class of preferred stock or warrants.

These types of listings are not subject to the special charge or to the minimum or maximum Listing Fees applicable to an initial listing of common shares.

Limitations on Listing Fees

Limitation on Listing Fees for Additional Class of Common Shares, including Tracking Stock.

An issuer that applies to list an additional class of common shares at any time will be charged a fixed Listing Fee of \$5,000 in lieu of the per share schedule. Such additional class of common shares includes, but is not limited to, a tracking stock.

Minimum and Maximum Listing Fees. The minimum and maximum Listing Fees applicable the first time an issuer lists a class of common shares are \$150,000 and \$250,000, respectively, which amounts include the special charge of \$37,500.

Minimum Listing Fees for Subsequent Listing of Additional Securities. The minimum application fee for a subsequent listing of additional securities is \$5,000. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the \$5,000 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed equity security or to the listing of an additional class of equity security (other than a new class of common shares).

Application Fee for Technical Original Listings and Reverse Stock Splits. The Exchange applies a \$15,000 application fee for a Technical Original Listing (*see* Section 703.10) if the change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their equity position or rights. For example, a change in a company's state of incorporation or a reincorporation or formation of a holding company that replaces a listed company would be considered a Technical Original Listing. The \$15,000 application fee also applies to a reverse stock split.

Fee for Certain Changes and for Poison Pills. A \$5,000 fee will apply to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation, and for applications relating to poison pills.

Maximum Listing Fee for Stock Splits and Stock Dividends. Listing fees on shares issued in conjunction with stock splits and stock dividends are capped at \$150,000 per split or issuance.

Maximum Listing Fee for Issuance of Additional Shares of a Listed Class. Listing Fees on the issuance of additional shares of an already listed class of stock are capped at \$500,000 per transaction, for example, in the case where shares are issued in conjunction with a merger or consolidation where a listed company survives, subsequent public offerings of a listed security and conversions of convertible securities into a listed security.

Discounts on Listing Fees. In the case of transactions such as a consolidation between two or more listed issuers that results in the formation of a new issuer (where at the conclusion of the transaction the new issuer immediately lists), or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer (where within 12 months from the conclusion of the transaction a previously unlisted issuer lists), Listing Fees for that newly listed issuer are calculated at a rate of 25% of total Listing Fees for each class of securities being listed (to the extent that total calculated listing fee for a class of common shares would be greater than \$250,000, the calculation would be 25% of the \$250,000 maximum for a new listing of common shares).

The special charge of \$37,500 and the \$150,000 minimum charge applicable when an issuer first lists a class of common shares do not apply to these types of transactions.

No discount will be applied where a listed issuer survives the merger or consolidation, or in the case of a backdoor listing. See Section 703.08(F) for a discussion of back door listings.

Listing Fees for Pre-emptive Rights. Preemptive rights representing equity securities are not subject to a separate Listing Fee. As of the date that preemptive rights are exercised, Listing Fees will accrue on the securities issued and the issuer will be billed for those Listing Fees at the beginning of the following year.

Calculating Listing Fees

Treasury stock, restricted stock and shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares an issuer is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated in the case of an original listing and subsequent additional issuance of common shares for U.S. and foreign private issuers.

U.S. Issuer

Example A: A U.S. issuer listing 300,500,000 common shares in the context of an initial public offering or transfer from another market would pay total Listing Fees of \$250,000 as follows:

- The special one-time charge is \$37,500.
- The Listing Fee for the first 75 million shares is calculated at the rate of \$0.0048 per share.
- The Listing Fee for the next 225 million shares is calculated at the rate of \$0.00375 per

share.

- The Listing Fee for the last 500,000 shares is calculated at a rate of \$0.0019 per share.
- Since Listing Fees on an original listing of the primary class of Common Shares are subject to a maximum fee of \$250,000 and the calculated amount exceeds this maximum, the Listing Fee will be \$250,000.

Example B: The same issuer subsequently applies to list an additional 100 million shares of common stock that are immediately issued. The issuer will pay total Listing Fees of \$190,000 for the subsequent listing. Since the company has already paid Listing Fees on more than 300 million shares, the Listing Fee for the additional 100 million shares is calculated at the rate of \$0.0019 per share.

Foreign Private Issuer

Example C: A foreign private issuer listing 125 million ADRs representing ordinary shares as part of a worldwide 500 million share offering, assuming that all 125 million ADRs are issued in the United States, will pay total Listing Fees of \$250,000 as follows:

- The special one-time charge is \$37,500.
- The Listing Fee for the first 75 million ADRs is calculated at the rate of \$0.0048 per ADR.
- The Listing Fee for the next 50 million shares is calculated at the rate of \$0.00375 per ADR.
- Since Listing Fees on an original listing of the ADRs are subject to a maximum fee of \$250,000 and the calculated amount exceeds this maximum, the Listing Fee will be

\$250,000.

Example D: The same issuer subsequently applies to list an additional 50 million ADRs that are immediately issued in the United States. The issuer will pay total Listing Fees of \$187,500 for the subsequent listing. Since the company has already paid Listing Fees on 125 million ADRs, Listing Fees for the additional 50 million ADRs are calculated at the rate of \$0.00375 per ADR.

The calculations set out in Examples C and D also apply to listings by foreign private issuers of ordinary shares, NY registered shares, and global shares.

Annual Fees

Annual Fee Schedule

The Annual Fee for each class of equity security listed is equal to the greater of the minimum fee or the fee calculated on a per share basis:

<u>Type of Security</u>	<u>Minimum Fee</u>	<u>Fee Per Share</u>
<u>Primary class of common shares</u>	<u>\$38,000</u>	<u>\$0.00093</u>
<u>Each additional class of common shares (including tracking stock)</u>	<u>\$20,000</u>	<u>\$0.00093</u>
<u>Primary class of preferred stock (if no class of common shares is listed)</u>	<u>\$38,000</u>	<u>\$0.00093</u>
<u>Each additional class of preferred stock (whether primary class is common</u>	<u>\$5,000</u>	<u>\$0.00093</u>

or preferred stock)

<u>Each class of warrants</u>	<u>\$5,000</u>	<u>\$0.00093</u>
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To the extent that an issuer has more than one class of common shares listed, the class with the greatest number of shares outstanding will be deemed the primary class of common shares. The same analysis is applicable where an issuer has more than one class of preferred stock listed, but no class of common shares listed. Where an issuer lists a class of common shares, as well as a class of preferred stock, Annual Fees on the preferred stock will be billed at the rate applicable to an additional class of preferred stock.

In the case of transactions involving listed companies (such as a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer), where at the conclusion of the transaction a previously unlisted issuer immediately lists, Annual Fees will not be charged to that new issuer for the year in which it lists to the extent that the transaction concludes after March 31. To the extent that the transaction concludes on or before March 31 in any calendar year, however, the newly listing issuer will be charged pro rata Annual Fees from the date of listing to the end of the year, subject to the Total Maximum Fee.

In addition, to the extent that a listed company is involved in a consolidation between two or more listed companies that results in the formation of a new issuer, or a merger or consolidation between a listed company and an unlisted issuer that results in the unlisted issuer surviving or the

creation of a new issuer, or a merger between two listed issuers where one listed issuer survives, and the transaction concludes on or before March 31 in any calendar year, the non-surviving listed company(ies) will only be subject to pro rata Annual Fees for that year through the date of the conclusion of the transaction. To the extent that the transaction concludes after March 31, the non-surviving listed company(ies) will be subject to full Annual Fees for that year.

902.04 FEES FOR LISTING SECURITIES OF CLOSED-END FUNDS

The Listing Fees and Annual Fees set out in this section apply to equity securities of closed-end funds.

Original Listing Fee Schedule

This Listing Fee Schedule is applicable when a closed-end fund first lists a class of common stock, or first lists a class of preferred stock in a case where common stock is not already listed.

<u>Number of Securities Issued</u>	<u>Total Listing Fee</u>
<u>Up to and including 10 million</u>	<u>\$20,000</u>
<u>Over 10 million up to and including 20 million</u>	<u>\$30,000</u>
<u>Over 20 million</u>	<u>\$40,000</u>

Listing Fee Schedule for Listing of Additional Securities

In the case of the following types of additional listings, Listing Fees are calculated on a per share basis for each class according to the Listing Fee schedule below:

- At the time it first lists, a closed-end fund lists one or more classes of preferred stock or warrants in addition to a primary class of common stock or preferred stock;

- Once listed, a closed-end fund lists additional shares of a class of previously listed securities; or
- Once listed, a closed-end fund lists a new class of preferred stock or warrants.

To the extent that an issuer lists more than one class of the same type of security, the class with the greatest number of shares issued will be deemed the primary class.

When determining Listing Fees, calculations are made at each level of the schedule up to the last level applicable to the number of securities being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. For examples of how Listing Fees are calculated, please see “Calculating Listing Fees” below.

<u>Number of Securities Issued</u>	<u>Fee per Share</u>
<u>Up to and including 2 million</u>	<u>\$0.01475</u>
<u>Over 2 million up to and including 4 million</u>	<u>\$0.0074</u>
<u>Over 4 million up to and including 300 million</u>	<u>\$0.0035</u>
<u>Over 300 million</u>	<u>\$0.0019</u>

Limitations on Listing Fees

Fund Family Discount. If two or more closed-end funds from the same fund family list at approximately the same time, the Exchange will cap the collective Listing Fee for those funds at \$75,000. The Exchange will consider funds from the same fund family to be listing at approximately the same time if an issuer provides notice that such funds will be listed as part of

the same transaction. A fund family consists of closed-end funds with a common investment adviser or investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

Limitation on Listing Fees for Additional Class of Common Shares. A closed-end fund that applies to list a new class of common shares in addition to its primary class will be charged a fixed Listing Fee of \$5,000 in lieu of the per share schedule.

Minimum Listing Fee for Subsequent Listing of Additional Securities. The minimum application fee for a subsequent listing of additional securities is \$2,500. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the \$2,500 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed equity security or to the listing of an additional class of equity security (other than a new class of common shares).

Fee for Certain Changes. A \$2,500 fee will apply to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation.

Application Fee for Technical Original Listings and Reverse Stock Splits. The Exchange applies a \$15,000 application fee for a Technical Original Listing (*see* Section 703.10) if the change in the issuer’s status is technical in nature and the shareholders of the original issuer receive or retain a share-for-share interest in the new issuer without any change in their equity position or

rights. For example, a change in a closed-end fund's state of incorporation or a reincorporation or formation of a holding company that replaces a listed closed-end fund would be considered a Technical Original Listing. The \$15,000 application fee also applies to a reverse stock split.

Maximum Listing Fee for Stock Splits and Stock Dividends. Listing fees on shares issued in conjunction with stock splits and stock dividends are capped at \$150,000 per split or issuance.

Maximum Listing Fee for Issuance of Additional Shares of a Listed Class. Listing Fees on the issuance of additional shares of an already listed class of stock are capped at \$500,000 per transaction, for example, in the case where shares are issued in conjunction with a merger or consolidation where a listed company survives, subsequent public offerings of a listed security and conversions of convertible securities into a listed security.

Discounts on Listing Fees. In the case of transactions such as a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, where at the conclusion of the transaction a previously unlisted issuer immediately lists, Listing Fees for that new issuer are calculated at a rate of 25% of total Listing Fees for each class of securities being listed (to the extent that total calculated listing fee for a class of common stock would be greater than \$250,000, the calculation would be 25% of the \$250,000 maximum for a new listing of common stock).

No discount will be applied where a listed issuer survives the merger or consolidation, or in the case of a backdoor listing. See Section 703.08(F) for a discussion of back door listings.

Listing Fees for Pre-emptive Rights. Preemptive rights representing equity securities are not subject to a separate Listing Fee. As of the date that preemptive rights are exercised, Listing Fees will accrue on the securities issued and the issuer will be billed for those Listing Fees at the beginning of the following year.

Calculating Listing Fees

Treasury stock, restricted stock and shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares a closed-end fund is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated by a closed-end fund in the case of an original listing and a subsequent additional issuance of common stock:

Example A: A closed-end fund listing 50 million common shares in the context of an initial public offering or transfer from another market would pay total Listing Fees of \$40,000.

Example B: The same closed-end fund subsequently applies to list an additional 5 million shares of common stock that are immediately issued. The closed-end fund will pay total Listing Fees of \$17,500 for the subsequent listing. Since the closed-end fund already has 50 million shares

outstanding, the Listing Fee for the additional 5 million shares is calculated at a rate of \$0.0035 per share.

Annual Fees

Annual Fee Schedule for Primary Listed Security

The following Annual Fee Schedule is applicable to a closed-end fund's primary class of listed security (common stock, or preferred stock if no common stock is listed) and is equal to the greater of the minimum fee or the fee calculated on a per share basis:

<u>Per Share Rate</u>	<u>\$0.00093 per share</u>
<u>Minimum Fee</u>	<u>\$25,000</u>

Additional Classes of Listed Equity Issues

The Annual Fee for equity issues other than the primary class of security listed is the greater of the minimum or the fee calculated on a per share basis:

<u>Per Share Rate</u>	<u>\$0.00093 per share</u>
<u>Minimum Fee</u>	<u>\$5,000</u>

To the extent that a closed-end fund has more than one class of common shares listed, the class with the greatest number of shares outstanding will be deemed the primary class of common shares. The same analysis is applicable where a closed-end fund has more than one class of preferred stock listed, but no class of common shares listed. Where a closed-end fund lists a class of common shares, as well as a class of preferred stock, Annual Fees on the preferred stock will be billed at the rate applicable to an additional class of preferred stock.

Limitations on Annual Fees

Fund families that list between 3 and 14 closed-end funds will receive a 5% discount off the calculated Annual Fee for each fund listed, and those with 15 or more listed closed-end funds will receive a discount of 15%. No fund family shall pay aggregate Annual Fees in excess of \$1,000,000 in any given year.

In the case of transactions involving listed issuers (such as a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer), where at the conclusion of the transaction a previously unlisted issuer immediately lists, Annual Fees will not be charged to that new issuer for the year in which it lists to the extent that the transaction concludes after March 31. To the extent that the transaction concludes on or before March 31 in any calendar year, however, the newly listing issuer will be charged pro rata Annual Fees from the date of listing to the end of the year.

In addition, to the extent that a listed issuer is involved in a consolidation between two or more listed companies that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, or a merger between two listed issuers where one listed issuer survives, and the transaction concludes on or before March 31 in any calendar year, the non-surviving listed issuer(s) will only be subject to pro rata Annual Fees for that year through the date of the conclusion of the transaction. To the extent that the transaction concludes after March 31, the non-surviving listed issuer(s) will be subject to full Annual Fees for that year.

902.05 FEES FOR LISTING STRUCTURED PRODUCTS

The Listing Fees and Annual Fees set out in this section apply to structured products listed under Section 703.18, the equity criteria set out in Section 703.19, and Section 703.21, and traded on the equity floor of the Exchange. The term “retail debt securities” refers to debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange.

For fees applicable to structured products listed under the debt criteria set out in Section 703.19 and traded on the Automated Bond System, see Section 902.06. In addition, for fees applicable to structured products with a term of seven years or less, see Section 902.07.

Listing Fees

Listing Fee Schedule

The Listing Fee billed to an issuer when it lists securities is based on the number of shares issued at the time of listing. For an issuer of a structured product that lists a dollar amount of securities, an implied number of shares will be calculated by dividing the aggregate dollar amount of securities being listed by the denomination of such securities.

When determining Listing Fees, calculations are made at each level of the schedule up to and including the last level applicable to the number of shares being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. For examples of how Listing Fees are calculated, please see “Calculating Listing Fees” below.

<u>Number of Securities Issued</u>	<u>Fee per Share</u>
<u>Up to and including 2 million</u>	<u>\$0.01475</u>
<u>Over 2 million up to and including 4 million</u>	<u>\$0.0074</u>
<u>Over 4 million up to and including 300 million</u>	<u>\$0.0035</u>
<u>Over 300 million</u>	<u>\$0.0019</u>

These fees apply the first time an issuer lists a structured product, as well as to the subsequent listing of additional shares of listed structured products or the listing of a new class of structured product. The Exchange treats each series of structured product as a separate issue.

Limitations on Listing Fees

Maximum Listing Fees for Retail Debt Securities. The maximum amount of Listing Fees that will be billed to an issuer listing retail debt securities in a calendar year is \$500,000.

Minimum Listing Fee for Subsequent Listing of Additional Securities. The minimum application fee for a subsequent listing of additional securities is \$2,500. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the \$2,500 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed security or to the listing of an additional class of security.

Fee for Certain Changes. A \$2,500 fee will apply to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation.

Calculating Listing Fees

Shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares an issuer is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated in the case of an original listing and a subsequent additional issuance of a structured product, such as a trust preferred security:

Example A: An issuer of trust preferred securities listing 10 million shares in the context of an initial public offering or transferring such securities from another market would pay total Listing Fees of \$65,300 as follows:

- The Listing Fee for the first 2 million shares is calculated at the rate of \$0.01475 per share.
- The Listing Fee for the next 2 million shares is calculated at the rate of \$0.0074 per share.
- The Listing Fee for the next 6 million shares is calculated at the rate of \$0.0035 per share.

Example B: The same issuer subsequently applies to list an additional 5 million shares of the same structured product that are immediately issued. The issuer will pay total Listing Fees of \$17,500 for the subsequent listing. Since the issuer has already paid Listing Fees on 10 million shares, the Listing Fee for the additional 5 million shares is calculated at the rate of \$0.0035 per share.

Annual Fees.

Annual Fee Schedule

Annual Fees are based on the total number of securities outstanding per listed issue. The Annual Fee is equal to the greater of the minimum fee or the fee calculated on a per share basis.

<u>Per Share Rate</u>	<u>\$0.00093 per share</u>
<u>Minimum Fee</u>	<u>\$5,000</u>

Limitation on Annual Fees on Repackaged Securities.

Any issue of Repackaged Securities will be subject to the Annual Fee schedule in effect at the time of listing of such issue, regardless of any changes to the fee schedule made thereafter. For purposes of this section, Repackaged Securities are securities listed under Section 703.19, issued by a trust with a term of years, where the assets of the trust consist primarily of underlying fixed-income securities, and where the trust is funded (or a reserve is created) at issuance to cover the trust's principal obligations and associated expenses during the life of the Repackaged Securities.

Annual Fees for Retail Debt Securities

As set out in Section 902.02, the \$500,000 Total Maximum Fee billable to an issuer in a calendar year includes all Annual Fees billed to an issuer for listed retail debt securities.

902.06 LISTING FEES FOR SHORT TERM SECURITIES

The Listing Fees and Annual Fees in this section apply to "short-term" securities, or those securities having a term of seven years or less, such as, but not limited to, warrants representing

equity securities, index warrants, foreign currency warrants, contingent value rights and structured products.

Listing Fees

When determining Listing Fees, calculations are made at each level of the schedule up to and including the last level applicable to the number of shares being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. For examples of how Listing Fees are calculated, please see “Calculating Listing Fees” below.

<u>Number of Securities Issued</u>	<u>Fee Per Share</u>
<u>Up to and including 2 million</u>	<u>\$0.007375</u>
<u>Over 2 million up to and including 4 million</u>	<u>\$0.0037</u>
<u>Over 4 million up to and including 300 million</u>	<u>\$0.00175</u>
<u>Over 300 million</u>	<u>\$0.00095</u>

These fees apply to the original listing of short-term securities, as well as to the subsequent listing of additional shares of listed short-term securities or the listing of a new class of short-term security. The Exchange treats each series of short-term security as a separate issue.

Limitations on Listing Fees

Minimum Listing Fee for Subsequent Listing of Additional Securities. The minimum application fee for a subsequent listing of additional securities is \$2,500. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the \$2,500 minimum supplemental listing application fee and the fee calculated on a per share basis. This

applies to the listing of additional shares of an already listed security or to the listing of an additional class of security.

Fee for Certain Changes. A \$2,500 fee will apply to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation.

Calculating Listing Fees

Shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares an issuer is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated in the case of an original listing and a subsequent additional issuance of a short-term security, such as index warrants:

Example A: An issuer listing 10 million index warrants in the context of an initial public offering or transferring such securities from another market would pay total Listing Fees of \$32,650 as follows:

- The Listing Fee for the first 2 million shares is calculated at the rate of \$0.007375 per share.
- The Listing Fee for the next 2 million shares is calculated at the rate of \$0.0037 per share.
- The Listing Fee for the next 6 million shares is calculated at the rate of \$0.00175 per share.

Example B: The same issuer subsequently applies to list an additional 5 million shares of the same security that are immediately issued. The issuer will pay total Listing Fees of \$8,750 for the subsequent listing. Since the company has already paid Listing Fees on 10 million shares, the Listing Fee for the additional 5 million index warrants is calculated at the rate of \$0.00175 per share.

Annual Fees

Annual Fees are based on the total number of securities outstanding per listed issue. The Annual Fee is equal to the greater of the minimum fee or the fee calculated on a per share basis.

<u>Per Share Rate</u>	<u>\$0.00093 per share</u>
<u>Minimum Fee</u>	<u>\$5,000</u>

902.07 FEES FOR LISTING INVESTMENT COMPANY UNITS

The Listing Fees and Annual Fees set out in this section apply to Investment Company Units listed under Section 703.16.

Listing Fees.

A flat Listing Fee of \$5,000 will be applied at the time a series of Investment Company Units first lists on the Exchange.

Annual Fees.

A flat Annual Fee of \$2,000 will apply to each series of Investment Company Units listed on the Exchange.

902.08 LISTING FEES FOR DEBT SECURITIES

This fee schedule applies to bonds and other fixed income debt securities that list on the Exchange, including debt securities that list under the debt standard in Section 703.19 and trade on the Automated Bond System.

Debt of NYSE equity issuers and affiliated companies* NO FEE

Debt of issuers exempt from registration under Securities and Exchange Act of 1934 NO FEE

All other debt securities —New issues

\$50 per million principal amount or fraction thereof. Minimum per issue \$2,500

—Issues outstanding one-year or more

\$25 per million principal amount or fraction thereof. Minimum per issue \$1,250

(For zero-coupon issues the principal amount is based on total proceeds received by the issuer.)

** The Exchange shall determine on a case-by-case basis whether a company is related to an issuer in a manner that qualifies the company as an “affiliated Company.”*

The following applies to Non-NYSE equity companies:

(1) In the case of relisting a previously listed issue so as to change the obligor or guarantor, a fee of \$2,500 shall apply.

(2) In the case of a shelf registration application, a fee of \$1,400 shall apply, which shall be applied toward the total listing fee.

(3) In the case of American Depositary Receipts (“ADRs”) that represent debt of a foreign company or sovereign, the principal amount of such shall be calculated as follows:

(a) If the issue is only available through a single offering, the principal amount shall be deemed to equal 10 percent of the U.S. dollar value of the worldwide outstanding float.

(b) If future offerings may be added to the issue, the principal amount shall be deemed to equal 12.5 percent of the U.S. dollar value of the worldwide outstanding float.

[902.02 Schedule of Current Listing Fees

Each Listing Application submitted to the Exchange should be accompanied by a check to the order of the New York Stock Exchange, Inc. for the fees payable at that time. A Listing Fee Agreement, in which the Company undertakes to pay initial and continuing annual fees, should accompany the application, unless such an agreement in the form shown in Para. 902.01 has previously been filed with the Exchange.

It is suggested that the calculation of the fees be checked in advance with the Exchange where there is any question as to the amount of the fee payable. All fees will be calculated to the nearest dollar.

There is a \$1 million cap on listing fees per issuer in any given calendar year. This fee cap includes and encompasses all classes of securities except derivatives issued by listed companies as part of their capital structure. This cap will not apply to closed-end funds.

A. Original Listing Fee

A special charge of \$36,800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. In any event, each issuer is subject to a minimum

original listing fee of \$150,000 inclusive of the special charge referenced in the preceding sentence.

The special charge is also applicable to an application which in the opinion of the Exchange is a “back-door listing”. *See Para. 703.08 (F)* for definition.

Original listings of closed-end funds are not subject to either the special charge or to the minimum original listing fee. Closed end funds will instead pay an original listing fee based on the number of shares outstanding upon listing. Closed-end funds with up to 10 million shares outstanding will be subject to a \$20,000 original listing fee, closed-end funds with greater than 10 million shares up to 20 million shares outstanding will be subject to a \$30,000 original listing fee, and closed-end funds with more than 20 million shares outstanding will be subject to a \$40,000 original listing fee. Original listings of closed-end funds are also not subject to the initial fees described below.

If two or more closed-end funds from the same fund family list at the same time, the Exchange will cap the collective original listing fee for those funds at \$75,000. A fund family consists of closed end funds with a common investment adviser or investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

B. Initial Fee

The initial fee schedule applies to original listings,** other than to original listings of closed-end funds as described above, and to the listing of additional shares of an already listed class of

stock,* new issues of preferred stock, warrants, or similar securities which are the subject of subsequent applications. New issues of additional classes of common stock of listed companies will be charged a fixed initial fee of \$5,000 in lieu of the per share schedule.

Each stock or warrant—and in the case of preferred stock, each series—shall be regarded as a separate issue.

Each application must cover the maximum number of shares that may be issued involving the particular transaction in question. However, the initial fee payable at the time of consideration of an application will cover only the determinable number of shares to be issued at or about that time. The balance of any initial fee under this schedule will accrue when subsequent issuance is made of shares not issued and paid for at the time that application is considered. This covers items like future issuances of shares for stock options, employee stock plans, conversion of other securities, contingencies, etc. Billing for such accrued initial fees is made as soon as possible following the close of the calendar year. Payment shall be made within 30 days of date upon receipt of invoice.

The initial fee shall be paid on shares issued at the time of billing by the Exchange. The subsequent reacquisition by the company and/or surrender to it for exchange, cancellation, or retirement shall not reduce this fee. The Exchange should be advised of shares cancelled. The shares authorized for listing on the Exchange should be reduced by the number of shares cancelled as well as by the shares no longer required to be issued under a specific plan for which

an application was previously filed with the Exchange.

The pertinent initial fees per million shares are:

Fee Bracket	Initial Fee
1st and 2nd million shares	\$14,750
3rd and 4th million shares	7,400
5th up to 300 million shares	3,500
In excess of 300 million shares	1,900

Reduced Initial Fee - A fee of \$15,000 will apply to a company which either changes its state of incorporation or reincorporates, forms a holding company which replaces a listed company or has a reverse stock split. This fee will be applicable only if the change in the company's status is technical in nature and providing also that shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.

Amalgamations are calculated at 25% of the applicable basic initial fee. An amalgamation is defined as the listing of shares resulting from merger or consolidation of two or more listed companies into a new company or into an unlisted company that becomes listed.

Mergers between an unlisted company and a listed company (other than back door listings (as defined in para.703.08(E))) - If listing occurs within 12 months of the merger, 25% of the applicable basic initial fee, except during the first year following the listed company's original listing, where the fee shall be the lesser of (1) 25% of the applicable basic initial fee or (2) the

full fee less a credit for the fee the listed company paid at the time of its initial listing.

In all other circumstances, the full initial fee rate will apply. For example:

where a change in a listed security is effected which in the opinion of the Exchange in effect represents a new issue or class of security, or where the rights or privileges or the identities of previous shareholders are altered.

Minimum Initial Fee—The minimum fee for the consideration of an application is \$2,500. Credit against initial fees will be limited to the determinable number of shares to be issued at or about the time the application is processed where the minimum fee applies.

The minimum initial fee of \$2,500 will apply for changes such as change of name, change of par value, the title of the security, etc., since these require changes in Exchange records.

*Fees on shares issued in conjunction with stock splits are capped at \$250,000 per split and at \$500,000 for all splits over a rolling three calendar-year period. Fees on shares issued in conjunction with a merger or acquisition (other than amalgamations) are capped at \$500,000.

**Fees on shares listed in conjunction with the original listing are limited to \$250,000 per company, inclusive of the special charge and encompassing all classes of securities.

C. Continuing Annual Fee

This annual fee is payable each year on each equity security listed on the Exchange and subject to the continuing annual fee schedule. A newly listed Company is billed upon listing (prorated

based upon the number of days from the listing date through the end of the year. In January of each year a billing for the continuing annual listing fee covering the following twelve months is made.)

Per Share Calculation—All issued shares including treasury shares are included in the calculation.

Continuing Annual Fees

(Effective January 1, 2003)

Per Share Rate	\$ 930 per million
Minimum Fee	\$35,000

The continuing annual fees for closed end funds are as follows:

Closed-end funds will pay at a rate of \$930 per million shares, subject to a minimum annual fee of \$25,000. Fund families with between 3 and 14 closed-end funds listed will receive a 5% discount off the calculated continuing annual fee for each fund listed, and those with more than 14 listed closed-end funds will receive a discount of 15%. No fund family shall pay aggregate continuing annual fees in excess of \$1 million in any one year.*

**In SR-NYSE-2003-33 (February 11, 2004), the Exchange eliminated a fee policy under which shares subject to continuing annual fees for a period of 15 consecutive years became exempt from further fees. The Exchange is phasing-in increases in fees for closed-end funds that were previously eligible for the 15-year exemption so that closed-end funds that are affected by the*

elimination will pay only 50% of increased fees in fiscal year 2004 and 100% in fiscal year 2005 and afterwards.

Companies with more than one class of common stock will pay a minimum fee of \$35,000 for the class with the greatest number of shares outstanding, with a minimum fee of \$20,000 applicable to each additional class.

Additional classes of common stock are subject to this schedule for continuing fees.

Computation of Fee—Other Equity Issues —

The fee is the greater of the minimum of \$5,000 per issue or the fee calculated on a per share basis. All issued shares are included in the calculation.

Special Rule for Repackaged Securities

Any issue of Repackaged Securities (as defined below), will be subject to the continuing annual fee schedule in effect at the time of listing of such issue, regardless of any changes to the fee schedule made thereafter. For the purpose of this Para. 902.02.C, Repackaged Securities are securities listed under Para. 703.19 of this Manual, issued by a trust with a term of years, where the assets of the trust consist primarily of underlying fixed-income securities, and where the trust is funded (or a reserve is created) at issuance to cover the trust's principal obligations and associated expenses during the life of the Repackaged Securities.

Overall Fee Cap

In calculating the continuing listing fee for a listed company, the fees for all classes (or series)

of listed securities of the company, excluding derivative products, fixed income products, and closed-end funds, are aggregated and the total continuing listing fee is capped at \$500,000.

Per Share Rates—Same as those applicable to common stock.

D. Supplements

A fee of \$430 will be made for processing information statements which are supplements to previous applications relating to minor changes where no action by the Exchange is involved.

2. Fees for Bonds and Similar Securities

Debt Listing Fees

The fee schedule applies to bonds and other fixed income debt securities that list for trading on the Exchange

Debt of NYSE equity issuers and affiliated companies*	NO FEE
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Debt of issuers exempt from registration under Securities and Exchange Act of 1934	NO FEE
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All other debt securities —New issues

\$50 per million principal amount or fraction thereof. Minimum per issue \$2,500

—Issues outstanding one-year or more

\$25 per million principal amount or fraction thereof. Minimum per issue \$1,250

(For zero-coupon issues principal amount based on total proceeds received by the issuer.)

** The Exchange shall determine on a case-by-case basis whether a company is related to an issuer in a manner that qualifies the company as an “affiliated Company.”*

The following applies to Non-NYSE equity companies:

(1) In the case of relisting a previously listed issue so as to change the obligor or guarantor, a fee of \$2,500 shall apply.

(2) In the case of a shelf registration application, a fee of \$1,400 shall apply, which shall be applied toward the total listing fee.

(3) In the case of American Depositary Receipts (“ADRs”) that represent debt of a foreign company or sovereign, the principal amount of such shall be calculated as follows:

(a) If the issue is only available through a single offering, the principal amount shall be deemed to equal 10 percent of the U.S. dollar value of the worldwide outstanding float.

(b) If future offerings may be added to the issue, the principal amount shall be deemed to equal 12.5 percent of the U.S. dollar value of the worldwide outstanding float.

902.03 Short-Term Securities

Fees for Short-Term Securities

Short-term securities are defined by the Exchange as those securities having a term of seven years or less (e.g. index warrants, foreign currency warrants, contingent value rights, etc.)

A. Short-Term Securities Initial Fees

The initial fee schedule applies to the original listing of short-term securities, and any additional short-term securities which are the subject of subsequent applications.

Each short-term security series shall be regarded as a separate issue.

Initial Fee Security Issue	Per Million
-1st and 2nd million	\$7,375
-3rd and 4th million	3,700
-5th and up to 300 million	1,750
-In Excess of 300 million	950

B. Short-Term Securities Continuing Annual Fees

(Effective January 1, 2003)

An annual fee is payable each year on each short-term security listed on the Exchange and subject to the continuing annual fee schedule. Following an initial proration period short-term securities will be billed in January of each year and will be billed for the forthcoming 12 months.

Per Share Rate:	\$930 per million
Minimum Fee per Issue	\$5,000

902.04 Overseas Companies

Rule:

A. Original Listing Fees

There are original and continuing annual fees associated with a New York Stock Exchange listing. The following highlights these fees which are based upon either the number of ordinary shares or ADR's (or similar securities) issued in the United States.

Schedule of Original Listing Fees

(effective September 8, 1989)

Original Fee *plus* \$36,800

Shares or ADRs Issued: Per Million

(or similar securities)

1st and 2nd million \$14,750

3rd and 4th million \$7,400

5th up to 300 million \$3,500

In excess of 300 million \$1,900

Minimum Fee \$150,000

Maximum Fee \$250,000

Fees for non-U.S. companies whose ordinary shares or ADRs (or similar securities) are traded in the U.S. are based on the number of shares or ADRs actually issued and outstanding in the U.S.

For example, assume ADRs from non-U.S. company are to be listed and traded on the New York Stock Exchange. Currently there are 8.5 million ADRs issued in the United States. The NYSE would levy its initial listing fee based on those 8.5 million ADRs as follows:

Original Fee *plus* \$36,800

Per Share/ADR Fee

1st and 2nd million \$29,500

3rd and 4th million \$14,800

5th and 8.5th million \$15,750

Total \$96,850

Since the per ADR fee of \$96,850 does not exceed the minimum fee of \$150,000, the company would pay an initial listing fee of \$150,000.

Also payable upon listing is the first year's continuing annual listing fee which will be based on the number of ADRs or shares issued in the U.S. and prorated for the balance of the calendar year.

B. Initial Listing Fees

If an Exchange-listed company issues shares or ADRs (or similar security) during the year, an initial fee, using the Schedule of Original Listing Fees, is levied only on those shares or ADRs (or similar security) issued in the U.S.

For example, assume an overseas company which has 8.5 million ADRs issued in the U.S. sells 2.5 million ADRs, only 1.0 million of which are issued in the U.S. The company would pay an initial fee at the rate of \$3,500 per million ADRs or \$3,500.

C. Continuing Annual Fees

The Exchange, through information provided by ADR or share agents, calculates a four-quarter average of shares or ADRs (or similar security) issued in the U.S. as a basis for an overseas company's annual fee. The quarterly average serves to correct for the possibility of flow-back and flow-in of shares or ADRs (or similar security) to and from the home country market and

more accurately represents the number of shares or ADRs (or similar security) in the U.S. over the course of the year.

The annual fee is equal to the greater of the fee calculated on a per share or ADR (or similar security) basis or based on the range minimums listed below.

Schedule of Continuing Annual Fees

Per Share or ADR Rate: \$930 per million

(or similar securities)

Minimum Fee for Shares or ADRs

Listed (or similar securities) (millions) \$35,000

Maximum Annual Fee \$500,000

Companies with more than one class of common stock will pay the minimum fee of \$35,000 for the class with the greatest number of shares outstanding and a minimum fee of \$20,000 for any additional class.]

* * * * *

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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

In the course of analyzing business goals and the competitive environment, the NYSE recently completed a review of the current listing fee schedule. As a result of this review, the Exchange is proposing a number of changes to the current fee chapter set out in Sections 902.01 to 902.04 of the Listed Company Manual. These proposed changes will not impact fees paid by issuers of closed-end funds, structured products, or short-term securities, except as specified. In addition, the Exchange is proposing a reorganization of the relevant sections of the Listed Company Manual into a clearer and more concise format setting out fees by type of listed security.

Reorganization of Fee Chapter

The Exchange proposes to restructure Section 902.00 of the Listed Company Manual. The proposed format sets out general information applicable to all fees, as well as separate fee provisions for listing equity securities, closed-end funds, structured products, short-term securities, investment company units and debt securities. Each proposed section includes guidelines on how fees are calculated, as well as numerical examples. We also propose recategorizing “original listing” and “initial listing fees” as “Listing Fees” and “continuing annual fees” as “Annual Fees” to minimize confusion regarding terminology.

Overall Fee Cap

The Exchange proposes to decrease the current total issuer per annum fee cap by 50% from \$1 million to \$500,000, with certain exceptions. The proposed \$500,000 annual total maximum fee amount will include all Listing Fees and Annual Fees payable by an issuer other than with respect to the following fees, which are excluded from the cap:

- Listing fees and Annual Fees for Investment Company Units⁵;
- Listing Fees and Annual Fees for closed-end funds;
- Listing Fees for all structured products; and
- Annual Fees for structured products other than retail debt securities.

The Exchange also proposes to clarify that the term “structured products” refers to securities listed under Sections 703.18, 703.19 and 703.21, and that the term “retail debt securities” refers to debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange.

Fees on closed-end funds and structured products (other than Annual Fees for retail debt securities) will continue to be subject to the fee schedules, including fee caps, currently in place for those products.

Listing Fees

The Exchange’s current Listing Fee schedule with respect to equity securities was last increased in 1989.⁶ The Exchange proposes to modify the Listing Fee schedule applicable to listed equity securities, while also simplifying the schedule. Currently, the Listing Fee schedule includes four tiers. The Exchange proposes reducing this schedule to three tiers. Under the rates as proposed, companies that list up to and including 75 million shares of an equity security will pay \$4,800 per million, above 75 million up to and including 300 million shares will pay \$3,750 per million, and above 300 million shares will continue to pay \$1,900 per million. As a result of

⁵ Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and John Carey, Assistant General Counsel, NYSE, on August 19, 2005.

⁶ See Securities Exchange Act Release No. 26602 (March 6, 1989), 54 FR 10471 (March 13, 1989) (SR-NYSE-88-44). Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and John Carey, Assistant General Counsel, NYSE, on August 19, 2005.

these proposed changes, companies may pay higher Listing Fees than under the current rates. The Exchange also proposes to set forth Listing Fees for all types of securities as per share numbers instead of the current per million approach (i.e., \$0.0048 per share rather than \$4,800 per million). In addition, the Exchange proposes to specify the fees applicable to tracking stocks. The fees with respect to Investment Company Units specified in the filing are the same as those that have been charged traditionally.

Currently, Section 902.02 establishes an initial listing fee cap for shares issued in conjunction with stock splits of \$250,000 per split and, for a single issuer who transacts multiple splits, a cap of \$500,000 over a consecutive three calendar year period. The Exchange proposes to decrease the Listing Fee cap for shares issued in conjunction with stock splits by 40% to \$150,000 per stock split. The Exchange also proposes to eliminate the three year cap on stock splits in light of the proposed \$500,000 annual total maximum fee. The Exchange also proposes to apply the \$150,000 fee cap to stock dividends. These proposed changes would also apply to fees paid by closed-end funds and structured products for stock splits and stock dividends.

The Exchange also proposes increasing from \$2,500 to \$5,000 the current minimum application fee for the authorization of a subsequent application to list additional securities or another class of equity securities, or to make certain changes (such as a change of name or par value) applicable to issuers that list equity securities. In addition, the Exchange proposes to slightly increase the special charge that is applied when a company first lists a class of common stock from \$36,800 to \$37,500. Note that the Exchange also proposes to eliminate the current

\$430.00 application fee applicable to processing minor amendments to previously filed applications.⁷

Annual Fees

The Exchange proposes increasing the current minimum Annual Fee payable on a common stock or a preferred-only listing from \$35,000 to \$38,000. The Exchange has also clarified that the Annual Fee for each class of equity security listed is equal to the greater of the minimum fee or the fee calculated on a per share basis of \$0.00093. The Exchange also proposes to clearly set out the minimum and per share rates applicable to each type of listed security.

Codification and Clarification of Billing Practices

The Exchange is also proposing to make a number of changes and clarifications to its current billing policies. For example, the Exchange proposes to clarify that the current fee cap of \$500,000 for shares issued in conjunction with a merger or acquisition is also applicable to all additional issuances of already listed securities (for example, subsequent public offerings and conversions of debt) on a per transaction basis.

The Exchange also proposes to specify that a foreign private issuer as defined in Rule 3b-4(c) under the Act⁸ that loses that status for purposes of SEC filings will be billed as a U.S. company starting at the beginning of the year following its change in status.

The Exchange proposes to specify, for all types of securities, that, in addition to treasury stock and restricted stock, shares issued pursuant to overallotment options will also be included

⁷ Telephone conference between John Carey, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on August 11, 2005.

⁸ 15 U.S.C. 78a.

when calculating Listing Fees at the time an issuer lists a class of security for the first time.

The Exchange proposes to amend its current policy regarding credits for issuers paying the minimum Listing Fee. Under the Exchange's policy since 2000 regarding Listing Fees, if an issuer's Listing Fee when it first lists as calculated based on the Listing Fee schedule is less than \$150,000, the difference between the calculated fee and \$150,000 is applied as a credit against future Listing Fees billed to the issuer. As proposed, new issuers billed the minimum would not receive a credit towards future Listing Fees. The approximately 140 issuers that currently have an unused Listing Fee credit will be able to apply that unused credit towards future listings until December 31, 2005.

The Exchange also proposes to amend its current policy regarding credits for issuers paying the minimum supplemental listing application fee. Currently, where an issuer pays the minimum application fee, such as where shares of an equity compensation plan are being listed subject to issuance, such minimum fee is applied against the Listing Fees that accrue during the calendar year as shares are issued. As proposed, issuers that pay the minimum supplemental listing application fee will not have that fee applied towards Listing Fees for future issuances.

The Exchange proposes to specify that Listing Fees and Annual Fees are non-refundable in all cases where an issuer delists from the Exchange, whether involuntarily or voluntarily.

The Exchange proposes to clarify that, in the context of the discount provided for Listing Fees to issuers that list more than one fund, the discount will be applicable when funds in the same fund family list at approximately the same time, as opposed to requiring that all such funds list on the same day. The Exchange will consider funds from the same fund family to be listing at approximately the same time if an issuer provides notice that such funds will be listed as part of the same transaction.

The Exchange proposes to amend the current limitations on Listing Fees applicable to certain mergers of companies and closed-end funds. The current rule provides that in the case of a consolidation, or “amalgamation,” of two listed companies into a new company or an unlisted company, which becomes listed, Listing Fees are calculated at a rate of 25% of basic Listing Fees. The current rule also provides that, in the case of a merger or consolidation of a listed company and an unlisted company that results in the formation of a new company or where the unlisted company survives, Listing Fees are calculated at a rate of 25% of basic Listing Fees, unless the merger occurs within 12 months of the listed company’s listing date, in which case the new company or the unlisted company pays Listing Fees equal to the lesser of (1) 25% of basic Listing Fees or (2) full Listing Fees minus a credit for Listing Fees paid by the listed company at the time of listing. The Exchange proposes to simplify the discounts applicable to these transactions so that, in the case of transactions such as a consolidation between two or more listed issuers that results in the formation of a new issuer (where at the conclusion of the transaction the new issuer immediately lists), or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer (where within 12 months from the conclusion of the transaction a previously unlisted issuer lists), Listing Fees for that newly listed issuer will be calculated at a rate of 25% of total Listing Fees for all classes of securities being listed (to the extent that total calculated listing fee for a class of common shares would be greater than \$250,000, the calculation would be 25% of the \$250,000 maximum for a new listing of common shares). The Exchange also proposes to specify that the current special charge of \$36,800 (proposed to be increased to \$37,500) and the \$150,000 minimum charge applicable when a company first lists a class of common shares do not apply to these types of transactions.

The Exchange also proposes to eliminate the current rule that provides for credit towards Annual Fees in the case where two listed companies merge and one of the listed companies survives. Currently, in this case, a credit is given to the surviving listed company for the pro rata portion of the non-surviving listed company's Annual Fees (for the period from the date of the conclusion of the transaction through the end of the calendar year) towards the surviving listed company's Annual Fees in the following year. Instead, the Exchange proposes to implement a new policy regarding all corporate mergers and consolidations. As proposed, in the case of transactions involving listed companies (such as the consolidation of two listed issuers into a new issuer, a merger between a listed issuer and an unlisted issuer where the unlisted issuer survives or a new issuer is formed, or a merger between two listed issuers where one listed issuer survives), all Listing Fees and Annual Fees paid by listed companies party to the transaction in the year, and up to the date, that the transaction concludes will be counted towards calculating the \$500,000 annual total issuer maximum fee for the ultimate listed issuer in the year of the corporate transaction.

In the case where the ultimate listed issuer was previously unlisted, however, Listing Fees and Annual Fees paid by any listed issuer party to the transaction will only be calculated towards the \$500,000 annual total maximum fee for the ultimate listed issuer if such issuer lists on the Exchange at the time the transaction concludes.

In addition, an ultimate listed company previously unlisted listing on the Exchange at the time the transaction concludes will not be required to pay Annual Fees in the year in which it lists to the extent that the transaction concludes after March 31. To the extent that the transaction concludes on or before March 31 in any calendar year, however, the newly listing issuer will be

charged pro rata Annual Fees from the date of listing to the end of the year, subject, in the case of an operating company, to the Total Maximum Fee.

In addition, to the extent that a listed company is involved in a consolidation between two or more listed companies that results in the formation of a new issuer, or a merger or consolidation between a listed company and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, or a merger between two listed issuers where one listed issuer survives, and the transaction concludes on or before March 31 in any calendar year, the non-surviving listed company will only be subject to pro rata Annual Fees for that year through the date of the conclusion of the transaction. To the extent that the transaction concludes after March 31, the non-surviving listed company will be subject to full Annual Fees for that year. The foregoing is a codification of the Exchange's current policy.

Implementation Dates for Proposed Changes

The proposed fee changes will be implemented as of the date of Commission approval of this filing with the exception of the proposed increase in the minimum continuing annual fee for common stock and preferred-only listings from \$35,000 to \$38,000, which is proposed to be effective as of January 1, 2006 should the Commission approve this filing before that date.

With respect to the proposed decrease in the current total issuer per annum fee cap from \$1 million to \$500,000, to the extent that, at the time this rule filing is approved by the SEC, a listed issuer has already paid or been invoiced for total fees in an amount greater than \$500,000 but less than \$1 million, the Exchange does not propose to provide a refund or credit for the amount that exceeds \$500,000.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change, as amended, is the requirement under Section 6(b)(5)⁹ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect 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, as amended, 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

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 Exchange consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

⁹ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 No. SR-NYSE-2005-35 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-35. 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 such filing also will 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-2005-35 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).