SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59559; File No. SR-NYSE-2009-03)

March 11, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change to Adopt Listing Fees for Securities Listed under Section 703.21 and 703.22 and Traded on NYSE Bonds

I. Introduction

On January 9, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to modify the listing fees for securities that are listed under the Exchange's Listed Company Manual ("Manual") Sections 703.21 and 703.22 and are traded on NYSE Bonds. The proposed rule change was published for comment in the Federal Register on February 4, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, securities listed on the NYSE pursuant to Sections 703.21 (Equity-Linked Debt Securities) and 703.22 of the Manual (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities) and traded on NYSE Bonds are subject to the fees set forth in Section 902.09 of the Manual.[4] Section 902.09 establishes various levels of fees based

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 59313 (January 28, 2009), 74 FR 6067.

4 The Exchange recently added securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds to those securities subject to the fees set forth in Section 902.09.

on the number of shares outstanding, with a minimum initial listing fee of $5,000 (for one million securities or fewer) and a maximum initial listing fee of $45,000 (for over 15 million securities). The minimum annual listing fee under Section 902.09 is $10,000 (for 6 million securities or fewer), and the maximum annual listing fee is $55,000 (for more than 50 million securities).

The Exchange proposes to establish a new section, proposed Section 902.10, in the Manual establishing fees payable in connection with the listing of securities that are listed under Section 703.21 and Section 703.22 and are traded on NYSE Bonds.[5] Under proposed Section 902.10, the initial listing fee for securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds will be a flat fee of $5,000 and the annual fee will be a flat fee of $5,000, regardless of the number of securities outstanding.

The Exchange stated that it is adopting a low level of listing fees for these securities because it believes doing so will make an exchange listing attractive in connection with offerings where listing is not crucial to a successful marketing of the securities. The Exchange notes that, in order to be listed on NYSE Bonds, a security must have a $1,000 denomination, and typically, index-linked securities and equity-linked securities with $1,000 denominations are marketed to institutional investors rather than retail investors. Because these purchasers are less concerned that securities they invest in should have an exchange listing, the Exchange notes that these securities are generally not listed on a national securities exchange. In addition, the Exchange

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See Securities Exchange Act Release No. 58599 (September 19, 2008), 73 FR 55883 (September 26, 2008) (SR-NYSE-2008-56).

5 The proposed rule change also amends Section 902.09 to remove references to the securities that will be subject to the fees under proposed Section 902.10.

notes that securities listed on NYSE Bonds do not have the benefit of a Designated Market Maker and, as such, the Exchange incurs lower regulatory and administrative costs in connection with such securities than would be the case with floor-traded securities. For the reasons noted above, the Exchange asserts that the proposed fees are set at a level that reflects the lower costs incurred by the Exchange in connection with the trading of securities on NYSE Bonds than on the equities trading floor, while remaining attractive to issuers for whom an exchange listing is not crucial.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act[6] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)[7] and 6(b)(5)[8] of the Act, which require 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 are designed, among other things, to promote just and equitable just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, to protect investors and

6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4).

8 15 U.S.C. 78f(b)(5).

the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[9]

The Commission believes that the new fees set forth for securities listed under Sections 703.21 and 703.22 of the Manual and traded on NYSE Bonds are consistent with the Act. The Commission notes that the adoption of new Section 902.10 will not result in any issuer paying higher initial listing fees, as the proposed flat initial listing fee of $5,000 is the same as the current minimum charged under Section 902.09. Accordingly, most issuers will pay less than would currently be the case under Section 902.09. Similarly, all issuers will be subject to lower annual fees, as the proposed flat rate of $5,000 is less than the current minimum of $10,000 charged under Section 902.09. The Commission notes that the Exchange represents that, since it added securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds to Section 902.09 of the Manual,[10] the Exchange has not listed any such securities, and therefore no issuers have been charged those higher fees.[11] The Commission also notes that the Exchange has stated that it incurs lower regulatory and administrative costs in connection with such securities and that the proposed fees are set at a level that reflects these lower costs. Therefore, the Commission expects that the reduced fees should not affect the Exchange's ability to finance its regulatory activities. Based on the above, the Commission believes the proposed fee changes meet the

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9 In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

10 See supra note 4.

11 See email from John Carey, Chief Counsel – U.S. Equities, NYSE, to Sara Hawkins, Special Counsel, Division of Trading and Markets, Commission, dated March 9, 2009

statutory standards[12] that exchange rules provide for an equitable allocation of reasonable dues, fees and other charges among issuers, and do not unfairly discriminate between issuers.

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR-NYSE-2009-03) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon
Deputy Secretary

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12 See Sections 6(b)(4) and 6(b)(5) of the Act, 15 U.S.C. 78f(b)(4) and 78f(b)(5).

13 15 U.S.C. 78s(b)(2).

14 17 CFR 200.30-3(a)(12).