

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58599; File No. SR-NYSE-2008-56)

September 19, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC.; Order Approving Proposed Rule Change to Amend Section 902.09 of the Listed Company Manual to Establish Fees for Securities Listed under Sections 703.21 and 703.22 of the Listed Company Manual and Traded on NYSE Bonds and to Waive Fees for Structured Products Transferred from the Amex to the NYSE

I. Introduction

On July 24, 2008, 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 establish fees for securities listed under Sections 703.21 and 703.22 of the Listed Company Manual and traded on NYSE Bonds³ and to waive fees for certain structured products transferred from the American Stock Exchange LLC (“Amex”) to the NYSE. The proposed rule change was published in the Federal Register on August 11, 2008.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Section 902.09 of the Manual to extend the initial and continued listing fees charged thereunder to certain listed securities traded on the equity floor to securities listed under Section 703.21 (Equity-Linked Debt Securities) and Section 703.22

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NYSE Bonds is the Exchange trading system designated for the purposes of receiving, processing, executing, and reporting orders in bonds. See NYSE Rule 86.

⁴ See Securities Exchange Act Release No. 58301 (August 4, 2008), 73 FR 46672.

(Index-Linked Securities) and traded on NYSE Bonds.⁵ The Exchange does not currently set forth in the Manual any listing fees for securities that are listed under either Section 703.21 of the Manual (Equity-Linked Debt Securities) or Section 703.22 of the Manual (Index-Linked Securities) and traded on NYSE Bonds. The Exchange has determined that the most appropriate fee schedule for these securities is that set forth in Section 902.09 of the Manual.⁶

In addition, the Exchange proposes to waive, in connection with transfers to the NYSE from NYSE Alternext US after the closing of the purchase of the Amex by NYSE Euronext (the “Merger”),⁷ (i) all fees payable under Section 902.08 of the Manual in connection with such transfers,⁸ and (ii) in the case of securities that will be traded on NYSE Bonds, all fees payable under Section 902.09 of the Manual in connection with such transfer, including the prorated

⁵ Section 902.09 of the Manual currently sets forth initial and continued listing fees to securities listed under Section 703.15 of the Manual (Foreign Currency Warrants and Currency Index Warrants) and Section 703.22 of the Manual (Index-Linked Securities) and traded on the equity floor of the Exchange.

⁶ See Section 902.09 of the Manual, which sets forth the listing fees and annual fees being proposed to be extended to Index-Linked Securities and Equity-Linked Debt Securities traded on NYSE Bonds. Generally, the section provided a graduated scale of initial listing fees depending on how many shares are outstanding, ranging from a minimum fee of \$5,000 for shares outstanding up to 1 million, to a maximum fee of \$45,000 for shares outstanding in excess of 15 million. Section 902.09 also provided a graduated scale of annual fees depending on the total number of securities outstanding per listed issue, ranging from a minimum fee of \$10,000 for shares outstanding up to 6 million, to a maximum fee of \$55,000 for shares outstanding in excess of 50 million.

⁷ NYSE Euronext, the ultimate parent company of the Exchange, has agreed to acquire the Amex pursuant to an Agreement and Plan of Merger, dated as of January 17, 2008. The members of the Amex voted to approve the transaction on June 17, 2008. No vote of the NYSE Euronext shareholders is required. When filing its proposed rule change, the NYSE stated that it is currently anticipated that the acquisition will be consummated during the third quarter of 2008.

⁸ Section 902.08 of the Manual sets forth listing fees for securities that list under the debt standard in Section 703.19 of the Manual and trade on NYSE Bonds. There is no listing fee for the debt of NYSE equity issuers and affiliated companies, or for the debt of issuers exempt from registration under the Act. There is an initial listing fee of \$15,000 for all other debt securities.

annual fee payable for the calendar year in which the transfer occurs. The fee waivers described in the previous sentence will only apply (i) if such transfer occurs during the calendar year in which the Merger is consummated and (ii) if the Merger is consummated no later than March 31, 2009.

In its filing, NYSE stated that in connection with the acquisition, NYSE Euronext intends to discontinue the listing on NYSE Alternext US of bonds and structured products issued in \$1,000 face amounts. To the extent that these securities qualify for listing under the applicable NYSE standards, the Exchange will encourage the issuers to apply to list those securities on the NYSE for trading on NYSE Bonds. As the issuers of these securities will already have paid listing fees to NYSE Alternext US and will be transferring to the NYSE as a result of a business decision made by NYSE Euronext, the Exchange proposes to waive all listing fees that would be payable in connection with the listing of securities transferred from NYSE Alternext US and traded on NYSE Bonds, including securities listed under Sections 703.19, 703.21 and 703.22, provided the transfer to NYSE Bonds occurs during the calendar year in which the Merger is consummated.⁹ This waiver will only take effect upon consummation of NYSE Euronext's acquisition of the Amex.

The Exchange also stated in its filing that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory, in particular because, after the Merger, NYSE Regulation, Inc. ("NYSE Regulation") will perform listed company regulation for both the Exchange and NYSE Alternext US, including a substantial review of companies

⁹ NYSE states that as annual fees for listed securities are calculated based on the number of securities outstanding on January 1 and billed on an annual basis, the proposed fee waiver will not apply to additional securities of a class that has been transferred from NYSE Alternext US that are issued after the date of transfer.

upon original listing. The Exchange further notes that many of the regulatory staff who currently perform initial and continued listing reviews at the Amex will become employees of NYSE Regulation at the time of the Merger and will continue to perform the same duties with respect to Amex companies after the Merger. According to the Exchange, securities transferring from NYSE Alternext US will be subjected to the same rigorous regulatory review as any other applicant for listing on the Exchange. However, the Exchange expects that, on average, the review of securities transferring from NYSE Alternext US to the Exchange will be less costly than the review of a transfer from an unaffiliated market, as the Amex listing regulatory staff that will have been absorbed by NYSE Regulation will already have performed a substantial review of any Amex-listed company, and NYSE Regulation will be able to rely on that prior work as a baseline in qualifying the company for listing on the Exchange and in conducting ongoing compliance activities with respect to any such company. Furthermore, the Exchange anticipates that the revenue it foregoes as a consequence of this waiver will be an immaterial amount that would not have any impact on its ability to finance its regulatory activities.

III. Discussion

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 and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)¹⁰ and 6(b)(5) of the Act,¹¹ 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

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

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 the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers.¹²

The Commission believes that the fees set forth for securities listed under either Section 703.21 of the Manual (Equity-Linked Debt Securities) or Section 703.22 of the Manual (Index-Linked Securities) and traded on NYSE Bonds are consistent with the Act, and Section 6(b)(4) of the Act¹³ in particular. The Exchange has not previously listed any securities under Sections 703.21 or 703.22 of the Manual that traded on NYSE Bonds and consequently does not currently set forth in the Manual any listing fees for such securities. The Commission notes that the Exchange has determined that the most appropriate fee schedule for these securities is that set forth in Section 902.09 of the Manual. As noted above, these fees currently set forth initial and continued listing fees for Foreign Currency Warrants, Currency Index Warrants, and Index-Linked Securities traded on the equity floor of the Exchange, and the extension of these fees to Equity-Linked Debt Securities and Index-Linked Securities traded on NYSE Bonds appears to be reasonable.¹⁴

The Commission further believes that the waiver of certain listing fees in connection with transfers to the NYSE from NYSE Alternext US after the closing of the Merger is consistent with the Act. The Commission notes that an issuer seeking to transfer to the Exchange has

¹² In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ The Commission notes that for certain structured products, including Equity-Linked Debt Securities traded on the equity floor that the fees in Section 902.05 of the Manual or Section 902.06 of the Manual apply. Index-Linked Securities, irrespective of whether traded on the equity floor or on NYSE Bonds, would follow the fee schedule in Section 902.09 of the Manual.

already paid initial listing fees to another national securities exchange when it became a publicly traded company. The Commission also notes that the Exchange does not expect the loss of initial listing fees to be material and has stated that the fee waiver will not affect the Exchange's ability to finance its regulatory activities. In addition, after the calendar year of the transfer of the issuer's security, the Exchange would assess annual fees and listing of additional shares fees from these issuers. Further, the Exchange believes that there will be lower burdens and costs associated with its review of issuers transferring from another national securities exchange and in conducting ongoing compliance activities with respect to such companies. The Commission notes that NYSE has stated that review of transfers from NYSE Alternext US will be less costly than for an unaffiliated entity, as the same regulatory staff on Amex (that will have been absorbed by NYSE Regulation) will have conducted a substantial review of an Amex company that NYSE Regulation will be able to rely upon as a baseline in qualifying the company for listing on the Exchange and in conducting ongoing compliance activities with respect to any such company. Therefore, the Commission believes it is not inequitable or unfair to provide for a waiver of initial and annual fees for a limited period of time after the merger is consummated. Notwithstanding this, the Commission expects that a full and independent review of compliance with the listing standards will be conducted for any company seeking to take advantage of the fee waiver, just as for any company that applies for listing on the Exchange. Further, the Commission expects the Exchange to maintain its commitment to resources to its regulatory oversight of the listing process and its ongoing compliance review of listed companies under its regulatory program.

Based on the above, the Commission believes the proposed listing fees and listing fee waivers do not constitute an inequitable allocation of reasonable dues, fees, and other charges

under Section 6(b)(4) of the Act,¹⁵ do not permit unfair discrimination between issuers under Section 6(b)(5) of the Act,¹⁶ and are otherwise consistent with the requirements of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSE-2008-56) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Acting Secretary

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30–3(a)(12).