

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55314; File No. SR-NYSE-2007-17)

February 20, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide That There Be No Initial Listing Fee Payable for Any Equity Security, Structured Product or Closed-End Management Investment Company That Transfers from Another National Securities Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 15, 2007, the New York Stock Exchange LLC (“Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Section 902.02 of its Listed Company Manual (the “Manual”) to provide that there shall be no initial listing fee payable in connection with the transfer of any equity securities, structured product, or closed-end management investment company listed on another national securities exchange to the Exchange. This fee waiver will

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

not be applicable to the transfer of any class of securities if the issuer's primary class of common stock remains listed on another national securities exchange.

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

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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Section 902.02 of the Manual to provide that there shall be no initial listing fee applicable to the transfer of any equity securities, structured product (defined as securities listed under Sections 703.18, 703.19 and 703.21) or closed-end management investment company listed on another national securities exchange. This fee waiver will not be applicable to the transfer of any class of securities if the issuer's primary class of common stock remains listed on another national securities exchange.

Section 902.03 of the Manual currently provides that issuers transferring the listing of their primary class of common shares from any other national securities exchange are not required in connection with such transfer to pay (i) initial listing fees or (ii) a one-time special charge of \$37,500 payable in connection with the listing of any new class of common shares. In

addition, Section 902.03 provides that issuers transferring the listing of their primary class of common shares from NYSE Arca to the Exchange are not required to pay Annual Fees with respect to that primary class of common shares for the remainder of the calendar year in which the transfer occurs. The proposed rule change will move this text from Section 902.03 to Section 902.02 and extend the application of waivers of the initial listing fee and one-time special charge to any other classes of equity securities (i.e., preferred stock, warrants, units including equity securities, and additional classes of common stock) transferred from another national securities exchange, as well as to transfers of closed-end management investment companies and structured products.

Issuers of securities that qualify for the proposed waiver of initial listing fees will be subject to the same level of annual fees and listing of additional shares fees as other NYSE issuers. The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Specifically, companies that benefit from the waiver will be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

The Exchange believes that the elimination of such fees in the case of securities transferring from other national securities exchanges is justified on several grounds. An issuer that already paid initial listing fees to another national securities exchange when it became a publicly traded company is reluctant to pay a second initial listing fee to another listing venue, even if it concludes that the Exchange offers the issuer and its investors superior services and market quality. Even if an issuer concludes that the Exchange would provide a superior market for its stock, the benefits of the transfer must currently be weighed against the cost of initial

inclusion. Since the expected benefits of the transfer would be diffused among the issuers' investors and realized over time, but the initial listing fees must be paid by the issuer immediately, the Exchange is concerned that issuers that stand to benefit may nevertheless opt to forgo a transfer. As such, the Exchange believes that assessing the initial fees against issuers that have already paid fees to list on another market imposes a burden on the competition between exchange markets and markets other than exchange markets, a competition that the Exchange believes is one of the central goals of the national market system. This concern is particularly great in light of the fact that the Commission has approved the waiver of initial listing fees by Nasdaq with respect to the listing of any security being transferred from another national securities exchange.⁵

The Exchange understands that the effect of this proposed rule change will be to impose a lower level of listing fees on issuers that transfer from another national securities exchange than on some other issuers. In light of the fact that the Exchange will collect the same level of annual fees and listing of additional shares fees from such issuers, however, the Exchange believes that the difference does not constitute an inequitable allocation of fees. In light of a transferring issuer's prior payment to another market and the generally lower burdens associated with reviewing a transferring issuer's eligibility, the Exchange believes that eliminating initial fees for transferring issuers is entirely consistent with an equitable allocation of listing fees.

The Exchange does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. Quite simply, even with the proposed rule change in place, the Exchange understands that a change in listing venue is a major step for an issuer, and

⁵ See Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (order approving SR-NASD-2004-140).

therefore the Exchange does not expect that the number of issuers that transfer to the NYSE in a given time frame will be sufficient to have a material effect on financial resources.

2. Statutory Basis

The bases under the Act for this proposed rule change are: (i) the requirement under Section 6(b)(4)⁶ 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 (ii) the requirement under Section 6(b)(5)⁷ of the Act that an exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and are not designed to permit unfair discrimination between issuers. In light of a transferring issuer's prior payment to another market, the Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory. The Exchange believes that the fee waiver will increase competition among listing markets and will remove a competitive disadvantage the Exchange currently has vis-à-vis Nasdaq, and is therefore designed to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹ Because the Exchange has designated the foregoing proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

The Exchange requests that the Commission waive the 30-day operative delay specified in Rule 19b-4(f)(6)(iii).¹¹ The Exchange believes that the proposed amendment does not affect investors as it simply waives a fee that is applicable to companies listing on the Exchange. Moreover, Nasdaq has already instituted such a waiver and the Exchange is at a competitive disadvantage as long as Nasdaq can list transferring companies without the payment of original listing fees and the Exchange cannot. Therefore, the Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

The Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.¹² The Commission believes that waiving the 30-day

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ The Exchange provided written notice to the Commission of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to filing, as required by Rule 19b-4(f)(6)(iii).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

operative delay is consistent with the protection of investors and the public interest. The proposed rule is substantially similar to provisions in Nasdaq's Rules 4510(a) and 4520(a), which were previously approved by the Commission.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSE-2007-17 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2007-17. 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 Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies

¹³ See supra note 5.

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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2007-17 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.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).