

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52696; File No. SR-NYSE-2005-35)

October 28, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Changes to Listed Company Manual Section 902.00 Regarding Listing Fees

I. Introduction

On May 18, 2005, the New York Stock Exchange, Inc. (“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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend the current fee chapter set out in Sections 902.01 to 902.04 of the Listed Company Manual (“Manual”) and reorganize the relevant sections of the Manual into a format setting out fees by type of listed security. The proposed rule change was published for comment in the Federal Register on September 23, 2005.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The filing proposes to amend and to reorganize the current listing fees chapter set forth in Section 902.00 through Section 902.04 of the Manual. Among other things, the Exchange proposes to decrease the current total issuer per annum fee cap by 50% from \$1 million to \$500,000, with certain exceptions. In addition, the Exchange proposes reducing the Listing Fee schedule to three tiers instead of the current four-tier structure. The Exchange also proposes to set forth Listing Fees for all types of securities as per

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

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

<sup>3</sup> See Securities Exchange Act Release No. 52463 (September 16, 2005), 70 FR 55933.

share numbers instead of the current per million share approach and specify the fees applicable to tracking stocks. The Exchange further proposes to decrease the Listing Fee cap for shares issued in conjunction with stock splits by 40% to \$150,000 per stock split and eliminate the three year cap on stock splits as well as apply the \$150,000 fee cap to stock dividends.

The Exchange also proposes increasing the current minimum application fee in certain situations; increasing 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 changes (such as a change in the name or par value) applicable to issuers that list equity securities; increasing the special charge that is applied when a company first lists a class of common stock; and eliminating the current application fee applicable to processing minor amendments to previously filed applications. With respect to annual listing 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; clarifying 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; and clearly setting out the minimum and per share rates applicable to each type of listed security. Finally, the Exchange is proposing to make a number of changes and clarifications to its current billing policies.

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.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of a national securities exchange be 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 a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the reorganization of the current fee chapter set out in Sections 902.01 to 902.04 of the Listed Company Manual will make those sections clearer, more concise, and easier to use. Guidelines on how fees are calculated as well as numerical examples in each section provide appropriate clarification, where necessary. Further, the Commission believes that the modifications to the Listing Fee schedule simplifies the fee structure for its members. While certain companies may pay higher listing fees than under the current fee schedule, the fee schedule overall is consistent with the Exchange's recent revisions to their fees generally.<sup>6</sup>

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<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>6</sup> See, e.g. Securities Exchange Act Release No. 49414 (March 12, 2004), 69 FR 13078 (March 19, 2004).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSE-2005-35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Jonathan G. Katz  
Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).