SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60868; File No. SR-NYSE-2009-83)

October 22, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Its Initial Listing Fees for Operating Companies

I. Introduction

On August 26, 2009, 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 amending its schedule of initial listing fees for operating companies. The proposed rule change was published in the Federal Register on September 17, 2009.[3] 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 its initial listing fees for operating companies as set forth in Section 902.03 of the Listed Company Manual, with retroactive application to any initial listing of new classes of securities on or after the date August 26, 2009. Currently, companies initially listing a new class of securities on the Exchange pay $0.0048 per share for up to and including 75 million shares, $0.00375 per share for any additional shares over 75 million shares up to and including 300 million shares, and $0.0019 per share for any additional shares over 300 million shares. Additionally, the first time an issuer lists a class of common shares, the issuer is subject to an additional one-time special charge of $37,500. The current minimum and

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 60644 (September 10, 2009), 74 FR 47842 (hereinafter referred to as "Notice").

maximum listing fees applicable to an issuer that lists a class of common shares the first time on the Exchange are $150,000 and $250,000, respectively, which includes the one-time special charge of $37,500.

The Exchange proposes to replace the current listing fee schedule with a flat rate initial listing fee of $0.0032 per share with respect to shares listed at the time a class of common shares is first listed on the Exchange.[4] NYSE further proposes to increase the one-time special charge from $37,500 to $50,000. Finally, the Exchange proposes to maintain the maximum initial listing fee of $250,000, but decrease the minimum initial listing fee from $150,000 to $125,000.[5]

Because the current listing fee schedule applied to both new listings and additional listings, the Exchange has proposed to create a new category for the listing of additional shares (the "Listing of Additional Shares Fee Schedule"). In its filing, the Exchange states that the current fee schedule will remain unchanged for the listing of additional shares of a class of previously listed securities.[6] Consistent with its current approach, the Exchange will include the shares with respect to which the company paid fees at the time of the initial listing of that class in calculating the fees for additional shares pursuant to the Listing of Additional Shares Fee Schedule. As noted above, the fees for listing additional shares will not be changed under the proposal. However, the Exchange is proposing to make certain non-substantive and clarifying

---

4 Under the proposal, initial listing fees for the following types of listings will also be charged at a rate of $0.0032 per share: (i) 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; and (ii) once listed, an issuer lists a new class of preferred stock or warrants.

5 In it filing, the Exchange states that the proposed increase to the one-time special charge is intended to offset a portion of the reduction in listing fee revenue attributable to the proposed lower listing fee per share and proposed lower minimum listing fee.

6 See Notice, supra note 3.

changes to the Listing of Additional Shares Fee Schedule which includes a new example to explain how the additional listing fees are calculated.

III. Discussion and Commission's Findings

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. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4) and (b)(5) of the Act,[7] which require, among other things, that the rules of an exchange (i) provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and (ii) are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

According to the Exchange, the lower initial listing fees will enable the Exchange to compete more effectively on a cost basis with other securities exchanges for listings of companies undertaking initial public offerings. Particularly, the Exchange states that smaller companies that have historically listed on the Exchange now qualify for listing under the recently adopted Assets and Equity Test[8] and many of these companies would benefit from the lower minimum initial listing fee.

Additionally, the Exchange represents that under the proposal no company will pay higher initial listing fees, and companies whose fees are not limited by the $250,000 maximum will pay a reduced initial listing fee. The Exchange asserts that although companies that are subject to the $250,000 maximum fee under both the current and the proposed fee schedule

---

7 15 U.S.C. 78f(b)(4) and (b)(5).

8 See Securities Exchange Act Release No. 58934 (November 12, 2008), 73 FR 69708 (November 19, 2008) (SR-NYSE-2008-98).

would not benefit from a reduction in fees, this is appropriate because these companies already benefit from a lower effective listing fee per share than other companies. As noted above, the tiered fee structure charges less per share for the number of shares being issued above certain limits.

Finally, the Exchange believes that the listing fees, as amended, should be retroactively applied to any new classes of common or preferred equity securities and warrants listed on or after August 26, 2009, as it will enable companies to benefit from any applicable reduction in listing fees without having to delay their listing until after Commission approval solely for the purpose of benefitting from the fee reduction.

Based on the above, the Commission believes that the Exchange's proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among issuers, in that it applies uniformly to all new classes of common or preferred equity securities and warrants. The Commission also believes that the proposal does not unfairly discriminate between issuers as all companies will be subject to the same fee schedule. Further, the Commission notes that despite the fact that the one time special charge for new issues will be universal and the flat rate is higher than currently exists on a per share basis as compared to some of the current tiered fees, no company will pay higher initial listing fees under the revised listing fee schedule because the maximum fees are staying the same and some companies will actually benefit from a reduced initial listing fee. The Commission notes that the Exchange has represented that despite these reductions, the Exchange will continue to have sufficient revenue to continue to adequately fund its regulatory activities.

Finally, the Commission believes it is appropriate that the proposed listing fees, as amended, be applied retroactively to any new classes of common or preferred equity securities and warrants listed on or after August 26, 2009, as no company will be subject to increased fees as a result of the proposal. Further, it will allow companies that have listed new classes of securities after the date of filing of this proposed rule change to benefit from any applicable reduction in initial listing fees. The Commission also notes that the changes, including the retroactive effect, were published for notice and comment in the Federal Register and we did not receive any comments.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.[9]

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-NYSE-2009-83) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy
Secretary

---

9 15 U.S.C. 78f(b)(4). In approving the proposed rule change, the Commission has considered the proposed rule's impact in efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

10 15 U.S.C. 78s(b)(2).

11 17 CFR 200.30-3(a)(12).