

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59320; File No. SR-NYSE-2008-112)

January 30, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change to Discontinue Policy of Prohibiting Transfer Agents from Charging Fees for Issuing Stock Certificates

I. Introduction

On October 30, 2008, the New York Stock Exchange LLC (“NYSE”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NYSE-2008-112 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the Federal Register on December 29, 2008.² The Commission received two comment letters.³ For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

As a part of the securities industry moving towards eliminating the use of physical certificates (*i.e.*, dematerialization) by encouraging investors to hold securities positions in book-entry form either in street name at a broker-dealer or through the Direct Registration System (“DRS”), the NYSE is discontinuing its long-standing, unwritten policy of prohibiting NYSE listed companies from charging for the issuance of stock certificates. DRS allows investors to

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 59106 (December 16, 2008), 73 FR 79531.

³ Letters from Charles V. Rossi, President, The Securities Transfer Association, Inc. (January 16, 2009); and Martin J. McHale, Jr., President, US Equity Services, Computershare (January 20, 2009).

have securities directly registered in book-entry form on the records of the issuer or its transfer agent without having a certificate issued.⁴

In its letter to the NYSE, the Securities Industry and Financial Markets Association (“SIFMA”), which is one of the leaders in the movement towards dematerialization, requested that the NYSE discontinue its prohibition of issuers or their transfer agents charging fees in connection with the issuance of securities certificates (“SIFMA Letter”).⁵ SIFMA noted that almost 75% of physical certificates deposited by broker-dealers and bank custodians at The Depository Trust Company (“DTC”), a registered clearing agency that is the primary custodian of securities traded in the United States, were issued within the last six months. SIFMA stated its beliefs that these recent deposits indicate that DTC participants (i.e., broker-dealers and banks) are providing physical certificates to their customers only to have the securities moved back into street name in a short period of time. In SIFMA’s view, this activity results in unnecessary expense and in the risk that the certificates may be lost, destroyed, or stolen. SIFMA stated that it had recently conducted a survey that showed that more than 1.2 million certificates each year need to be replaced because of loss, destruction, or theft at an approximate cost to the transfer agents of \$65 million.⁶

⁴ DRS allows securities positions to be electronically transferred to a broker-dealer in order to effect a transaction without the risk and delay associated with the use of paper certificates. Since March 31, 2008, Section 501.00 of NYSE’s Listed Company Manual has required that all securities listed on the NYSE must be eligible for participation in DRS. Approximately 2,428 NYSE listed securities currently participate in DRS. Securities Exchange Act Release No. 58398 (August 20, 2008), 73 FR 51546 (September 3, 2008) [File No. SR-NYSE-2008-069].

⁵ Letter to Stephen Walsh, Vice President, NYSE Euronext, from Lawrence Morillo, SIFMA Operations Legal & Regulatory Sub-Committee Chair. (August 26, 2008).

⁶ “Securities Industry Immobilization & Dematerialization Implementation Guide – The Phase-Out of the Stock Certificate” (SIFMA, 2008).

NYSE believes that securityholders derive no apparent benefit from continuing to hold their securities in certificated form rather than in uncertificated form in street name or through DRS and that the inability of the issuers or their transfer agents to charge for the issuance of securities certificates imposes a considerable cost on issuers and transfer agents. Therefore, NYSE is discontinuing its prohibition of issuers or their transfer agents charging fees for the issuance of new certificates. Allowing transfer agents to charge for the issuance of certificates should not only shift the cost of the issuance of certificates from the issuers and transfer agents to the requesting securityholders but should also have the added effect of encouraging more securityholders to hold their securities in street name or through DRS, which should further the dematerialization movement. NYSE listed companies that want their investors to continue to have access to the free issuance of new certificates will be able to ensure the continuation of such practice through their contractual arrangements with their transfer agents.

NYSE believes that the rule change will help make the securities markets more safe and efficient by encouraging the dematerialization of securities and by correctly placing the cost of the use of certificates on those investors requesting certificates. NYSE also believes that the rule change is consistent with the protection of investors and the public interest because holding a securities position in street name or through DRS provides investors with the ability to hold their securities in a safe and cost-effective manner without incurring the costs associated with the issuance and processing of securities certificates.

III. Comment Letters

The Commission received two comment letters,⁷ both in support of the proposed rule change. Computershare, a registered transfer agent, and The Securities Transfer Association, an industry association representing transfer agents, stated that the rule change was an important step toward the goal of dematerialization by decreasing the use of certificates in the marketplace and encouraging investors to hold shares in DRS, thereby reducing the risk and unnecessary expense for both issuers and shareholders of issuing and holding certificates.

IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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.⁸ The Commission's approval of the rule change should remove impediments to and perfects the mechanism of a free and open market and a national market system in that it encourages the dematerialization of securities, which should improve the process of transferring securities in the public markets. The rule change is also consistent with the protection of investors and the public interest because investors can avoid the fees for the issuance of certificates by holding their securities in street name or through DRS which are safer and more cost effective alternatives to holding securities in certificated form.

⁷ Supra note 3.

⁸ 15 U.S.C. 78f(b)(5).

Accordingly, for the reasons stated above the Commission believes that the rule change is consistent with NYSE's obligation under Section 6 of the Act.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6 of the Act and the rules and regulations thereunder.⁹

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-2008-112) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

¹⁰ 17 CFR 200.30-3(a)(12).

