

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53978; File No. SR-NYSE-2006-42)

June 13, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to American Depositary Receipt Fees

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> notice is hereby given that on May 25, 2006, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which items have been prepared by NYSE. NYSE has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On June 12, 2006, NYSE submitted Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NYSE proposes to amend Section 103.04 of the Exchange’s Listed Company Manual relating to sponsored American Depositary Receipts (“ADRs”) to eliminate the requirement that certain services must be provided without charge. The text of the proposed rule change, as

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

amended, is set forth below. Proposed new language is underlined; proposed deletions are [bracketed].

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## **Listed Company Manual**

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### **103.00 Non-U.S. Companies**

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#### **103.04 Sponsored American Depository Receipts or Shares (“ADR[’]s”)**

In order to list ADRs, the Exchange requires that such ADRs be sponsored. Foreign private issuers [Non-U.S. companies] sponsor their ADR[’]s by entering into a[n] deposit agreement with an American depository bank to provide, [without charge to the ADR holders,] such services as cash and stock dividend payments, transfer of ownership, and distribution of company financial statements and notices, such as shareholder meeting material. This agreement is a required supplement to the basic Listing Agreement. (See [Para.] Section 901.00 for the text of the Listing Agreements.)

[Non-U.S. companies electing to sponsor their ADR’s are often interested in putting their names and products prominently before the American public. This may result in a direct relationship with American investors, customers and suppliers. An Exchange listing requires that a company sponsor its ADR’S.]

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<sup>5</sup> In Amendment No. 1, the Exchange eliminated proposed changes to the title of Section 103.00 of the Listed Company Manual and corrected typographical errors in the rule text.

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

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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. 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

NYSE proposes to amend Section 103.04 of the Exchange’s Listed Company Manual (the “Manual”). Section 103.04 currently requires that the depositary agreement entered into between a non-U.S. company and an American depositary bank must provide that services such as cash and stock dividend payments, transfer of ownership, and distribution of company financial statements and notices, such as shareholder meeting material, be provided to ADR holders free of charge. The Exchange proposes to eliminate this requirement.

The Exchange represents that Section 103.04 of the Manual dates from a time when companies listed ordinary shares in their home market and ADRs on NYSE. Historically, when an issuer listed a sponsored ADR security, trading would occur both in the underlying security in the home country and in the ADRs on the Exchange. As a result, the Exchange states, conversions between the underlying security and the ADR provided significant revenue for the depositary bank. In addition, at that time, the Exchange asserts, the market for depositary services was less competitive and institutional investors played a more limited role in influencing issuer and bank practices.

The Exchange asserts that today, however, depositary receipts have become a preferred method of equity financing and are listed on exchanges around the world. Moreover, the Exchange represents that it is now not unusual for issuers from developing markets, such as China and other Asian countries, to list ADRs in the United States without also listing the underlying securities in their home market. The Exchange represents that because no other U.S. or overseas market limits the fees that depositary banks can charge ADR holders, it believes that the practical effect of Section 103.04 of the Manual is to increasingly foreclose the Exchange as a listing market for Asian issuers. As a result of a lack of potential conversion revenue, the Exchange argues that the effect of Section 103.04 of the Manual is to place the depositary bank at an economic disadvantage if the issuer lists its ADRs on the Exchange. Thus, the Exchange believes that NYSE's limitation on the fees that can be charged to ADR holders has become an impediment to intermarket competition both within the United States and with international listing venues.

Moreover, NYSE notes that fees applicable to ADR holders are clearly disclosed in the company's registration statement when a company registers its ADRs and the underlying securities with the Commission in connection with listing on a U.S. market. The deposit agreement, which sets forth the applicable fees, is also required to be filed as an exhibit to the company's registration statement and to the depositary bank's registration statement on Form F-6.

NYSE also believes that the competition among the depository banks in the sponsored ADR market serves to regulate the fees that banks charge to ADR holders. In light of these developments, the Exchange no longer feels that it is necessary or appropriate for NYSE to regulate fees for ADR holders.

## 2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change, as amended, is the requirement under Section 6(b)(5) of the Act<sup>6</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest.

### 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 Exchange 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.

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

NYSE has designated the foregoing rule change, as amended, as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder<sup>8</sup> because the rule change does not: (i) significantly affect the protection of investors or the public

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<sup>6</sup> 15 U.S.C. 78(f)(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the day 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 Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period for “non-controversial” proposals and make the proposed rule change, as amended, effective and operative upon filing. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay for the proposed rule change, as amended, is consistent with the protection of investors and the public interest because other national securities exchanges do not have similar restrictions on depositary bank fees in their listing standards.<sup>9</sup>

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.<sup>10</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.

Comments may be submitted by any of the following methods:

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<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 12, 2006, the date on which NYSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-42 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-2006-42. 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 Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies 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 NYSE. 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-2006-42 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris  
Secretary

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