

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54223; File No. SR-NYSE-2006-43)

July 26, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change to Amend Section 902.02 of the Listed Company Manual to Exempt Companies Transferring from NYSE Arca from Initial Listing Fees and the Annual Fee for the Year of Such Transfer

On June 7, 2006, the 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 to amend Section 902.02 of its Listed Company Manual to provide that there shall be no initial listing and no prorated annual fee payable with respect to the first partial calendar year of listing for any company listed on NYSE Arca, Inc. (“NYSE Arca”) that transfers the listing of its primary class of common shares to the Exchange. The Commission published notice of the proposal in the Federal Register on June 26, 2006.³ The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and 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 exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 54008 (June 16, 2006), 71 FR 36370.

⁴ 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).

⁵ 15 U.S.C. 78f.

specifically that the proposed rule change is consistent with Sections 6(b)(4)⁶ and 6(b)(5) of the Act,⁷ which require 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 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. The Commission believes that the fee waiver is reasonable, given the NYSE's representation that its review of companies transferring from NYSE Arca to the Exchange will be less costly than the review of a transfer from other self-regulatory organizations. While the Commission understands that the Exchange will rely on the baseline review of any NYSE Arca listed company performed by NYSE Regulation, the Commission notes that the Exchange must conduct a thorough regulatory review of companies transferring from NYSE Arca to the Exchange to ensure that the Exchange can independently confirm that such companies qualify for listing on the Exchange. The Commission also believes the proposed waiver may enhance competition by making NYSE Arca a more attractive listing venue and a viable alternative to listing on Nasdaq.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁸, that the

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSE-2006-43) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris
Secretary

⁹ 17 CFR 200.30-3(a)(12).