

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54849; File No. SR-NYSE-2006-104)

November 30, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive Initial Listing Fee and One-Time Special Charge in Connection with Listing New Class of Common Shares Payable by Any Company Listed on Another National Securities Exchange that Transfers the Listing of its Primary Class of Common Shares to the NYSE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 29, 2006, The New York Stock Exchange LLC (“Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared substantially by NYSE. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ NYSE gave the Commission written notice of its intention to file the proposed rule change on November 29, 2006. The Commission reviewed the proposed rule change and gave NYSE permission to file the proposed rule change on the same day. NYSE has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

NYSE proposes to amend Section 902.03 of its Listed Company Manual to provide that there shall be no initial listing fee payable by any company listed on another national securities exchange that transfers the listing of its primary class of common shares to the Exchange. The Exchange will eliminate initial listing fees for issuers listed on other national securities exchanges that transfer their listing to the Exchange on or after November 29, 2006. In addition, the Exchange will waive with respect to such issuers the special one-time charge of \$37,500 payable in connection with the initial listing of any class of common shares. The text of the proposed rule change is available at www.nyse.com, at the NYSE, and at the Commission's Public Reference Room.

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 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 902.03 of its Listed Company Manual to provide that there shall be no initial listing fee payable by any company listed on another national securities exchange that transfers the listing of its primary class of common shares to the Exchange. NYSE will eliminate entry and application fees for exchange issuers that transfer their listing to the Exchange on or after November 29, 2006. In addition, the Exchange will waive with respect to

such issuers the special one-time charge of \$37,500 payable in connection with the initial listing of any class of common shares. For issuers that have paid these fees, the Exchange will refund the money. Companies transferring from other national securities exchanges will still be required to pay the annual listing fee payable by all companies, prorated for the first portion of a calendar year after the listing date.

Companies transferring from other national securities exchanges will be subject to the same level of annual fees and listing of additional shares fees as other NYSE issuers. The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Specifically, companies that switch their listing will be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

The Exchange believes that the elimination of such fees is justified on several grounds. An issuer that already paid initial listing fees to an exchange when it became a publicly traded company is reluctant to pay a second initial listing fee to another listing venue, even if it concludes that the Exchange offers the issuer and its investors superior services and market quality. Even if an issuer concludes that the Exchange would provide a superior market for its stock, the benefits of the switch must currently be weighed against the cost of initial inclusion, which can be as much as \$250,000. Since the expected benefits of the switch would be diffused among the issuers' investors and realized over time, but the initial listing fees must be paid by the issuer immediately, the Exchange is concerned that issuers that stand to benefit may nevertheless opt to forgo a switch. As such, the Exchange believes that assessing the initial fees against issuers that have already paid fees to list on another market imposes a burden on the competition

between exchange markets and markets other than exchange markets, a competition that the Exchange believes is one of the central goals of the national market system. This concern is particularly great in light of the fact that the Commission has approved the waiver of initial listing fees by Nasdaq with respect to companies transferring from other national securities exchanges.⁶

The Exchange understands that the effect of this proposed rule change will be to impose a lower level of listing fees on switching issuers than on some other issuers. In light of the fact that the Exchange will collect the same level of annual fees and listing of additional shares fees from such issuers, however, the Exchange believes that the difference does not constitute an inequitable allocation of fees. In light of a switching issuer's prior payment to another market, the Exchange believes that eliminating initial fees for switching issuers is entirely consistent with an equitable allocation of listing fees.

The Exchange does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from switching issuers or in terms of diminished entry fees. Quite simply, even with the proposed rule change in place, the Exchange understands that a change in listing venue is a major step for an issuer, and therefore the Exchange does not expect that the number of switching issuers in a given time frame will be sufficient to have a material effect on financial resources. Accordingly, the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

⁶ See Securities Exchange Act Release Nos. 50740 (November 29, 2004), 69 FR 70299 (December 3, 2004)(SR-NASD-2004-140)(notice) and 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005)(approval order).

NYSE believes the proposed rule change is consistent with the requirement under Section 6(b)(4)⁷ of the Act 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 the requirement under Section 6(b)(5)⁸ of the Act that an exchange have rules that 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. In light of a switching issuer's prior payment to another market, the Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory because the Exchange expects that, on average, the review of companies transferring from other national securities exchanges to the Exchange will be less costly than the review of a previously unlisted company, as the issuer will have previously been subject to corporate governance requirements very similar to those of the Exchange. The Exchange believes that the fee waiver will make it easier for companies to transfer among national securities exchanges and will remove a competitive disadvantage the Exchange currently has vis a vis Nasdaq and is therefore designed to perfect the mechanism of a free and open market.

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 purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

At any time within 60 days of the filing of such 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.

NYSE has asked that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.¹¹ Because waiver of these fees will enable NYSE to compete for listings with Nasdaq, the Commission believes waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

Commission designates the proposal to be effective and operative upon filing with the Commission.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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. Please include File Number SR-NYSE-2006-104 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-104. 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

¹² For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2006-104 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).