

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55742; File No. SR-NYSE-2007-19)

May 10, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendment No. 1 Relating to the Waiver of Certain Listing Fees

I. Introduction

On February 22, 2007, 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” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to waive certain listing fees. The proposal was published for comment in the Federal Register on March 14, 2007.<sup>3</sup> The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 with the Commission on April 27, 2007.<sup>4</sup> This order provides notice of and solicits comment on the proposed rule change as modified by Amendment No. 1 and approves the proposal on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Section 902.02 of its Listed Company Manual (the “Manual”) to provide that there shall be no initial listing fee applicable to (i) any company listing

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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> See Securities Exchange Act Release No. 55421 (March 14, 2007), 72 FR 1350 (the “Notice”).

<sup>4</sup> Amendment No. 1 (i) proposed a clarifying change to the proposed rule text and (ii) added language to the purpose section to clarify the effect of the waiver of listing fees for a company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act. The text of Amendment No. 1 is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

upon emergence from bankruptcy, or (ii) any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act.

The Exchange also proposes a temporary cap on fees payable by companies listing upon emergence from bankruptcy. Annual fees for such issuers will be billed at a rate of one-fourth of the applicable annual fee rate for the fiscal quarter the issuer lists and for each of the succeeding 12 full fiscal quarters. Further, the total fees (including initial listing fees and annual fees) that may be billed to such an issuer during this period would be subject to a \$25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. The exclusions applicable to the standard fee cap, set forth in Section 902.02 under the heading “Total Maximum Fee Payable in a Calendar Year,” would also apply to issuers listing upon emergence from bankruptcy.

The Exchange believes that the initial listing fee waiver and fee cap for companies listing upon emergence from bankruptcy are justified by the unique circumstances of those issuers, which, according to the NYSE, among other things, tend to be more sensitive to the initial and continued costs associated with listing because of the desire in bankruptcy proceedings to ensure creditors are paid as much as possible. According to the Exchange, because bankrupt companies face unique challenges in the listing process, the number of companies that will benefit from the fee waiver and lower fee cap applicable to bankrupt companies will be very limited, and the fee cap will apply only during a three-year transitional period, the Exchange does not believe that the treatment this proposal would afford to bankrupt companies constitutes an inequitable or unfairly discriminatory allocation of fees.

In addition, the Exchange believes that waiving initial listing fees for a company listing its primary class of common stock which is registered under that Act but not listed on a national securities exchange is appropriate and does not constitute an inequitable or unfairly

discriminatory allocation of fees. The Exchange anticipates that most companies taking advantage of this waiver will be formerly-listed companies that were delisted as a result of a failure to timely file annual reports with the Commission.<sup>5</sup> The Exchange notes that these companies usually seek to re-list on the Exchange as soon as their filings are up to date.<sup>6</sup> According to the Exchange, because such companies had previously paid initial listing fees to the Exchange or to another national securities exchange, the Exchange believes that to make them pay these fees again would further penalize them unnecessarily.

The Exchange has represented that the proposed rule change would not affect its commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Companies that benefit from one of the proposed waivers would 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 would conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

The Exchange also has represented that it does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. A limited number of

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<sup>5</sup> In Amendment No. 1, the Exchange stated that there may occasionally be an initial listing on the Exchange of a company which is trading in the over-the-counter market immediately prior to listing and which was not previously delisted as a result of a failure to timely file annual reports with the Commission. However, in the Exchange's experience, very few such companies meet the Exchange's listing requirements and, therefore, the Exchange expects the number of such listings and the related loss of fee revenue to be immaterial.

<sup>6</sup> In its filing, the Exchange stated that typically, such companies are otherwise in good standing with the Exchange or with another national securities exchange, but fell behind on their reporting obligations under the Act because their auditors or the Commission required restatements of their financial statements. The Commission notes that the timely filing of accurate financial reports under the Act is critical to investors and our national market and assures that investors receive up to date financial information about listed companies.

companies are qualified and seek to list on the Exchange that are either emerging from bankruptcy or have a registered class of common stock but are not currently listed on another market. 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.

Following their approval, the Exchange would apply the amendments contained in the proposal retroactively to February 22, 2007, the date of filing of the proposed rule change.<sup>7</sup>

### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires 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. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, inter alia, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and not designed to permit unfair discrimination between issuers. The Commission has not received any comments on the proposal. This order approves the proposed rule change, as modified by Amendment No 1.

The Commission notes that companies who re-list upon emerging from bankruptcy or who re-list upon a return to good standing following delisting have usually paid listing fees to

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<sup>7</sup> See supra note 3.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

either the Exchange or to another national securities exchange at the time of their initial listing. In addition, with respect to the cap on annual fees for companies listing upon emergence from bankruptcy, the Commission notes that the fee cap is a temporary one, designed to enable recently bankrupt companies to manage the costs associated with listing, consistent with the desire in bankruptcy proceeding to ensure that creditors are paid as much as possible. For these reasons, the Exchange argues, the waiver of listing fees and the cap on annual fees are equitable.

The Commission recognizes that, as drafted, the initial fee waiver would extend to companies that have never listed on a national securities exchange, which thus have never paid listing fees. In this regard, the Exchange acknowledges that some companies other than those returning to good standing after recent delisting—e.g., a company trading on the over-the-counter market—may seek to take advantage of the waiver of listing fees for companies not listed on a national securities exchange but registered under the Act. However, the Exchange expects the number of such companies eligible for the waiver to be very small, since very few of these companies would meet the Exchange’s quantitative listing requirements.

The Commission also notes that the Exchange has represented that the waiver of listing fees and the cap on annual fees should not have a material financial impact on the exchange, or impact the Exchange’s resource commitment to its regulatory oversight of the listing process or its regulatory programs.

Further, the proposal does not have any impact on whether a company is actually eligible to list on the Exchange. The Commission expects, and the Exchange has represented, that a full and independent review of compliance with listing standards will be conducted for any company seeking to take advantage of either of the fee waivers, just as for any company that applies for listing on the Exchange.

In light of these arguments, the Commission agrees that the proposed waiver and fee cap, which are retroactively effective to February 22, 2007, the date of the filing of the proposed rule change,<sup>11</sup> do not constitute an inequitable allocation of reasonable dues, fees, and other charges, do not permit unfair discrimination between issuers, and are generally consistent with the Act.

Pursuant to Section 19(b)(2) of the Act,<sup>12</sup> the Commission finds good cause for approving the proposal prior to the thirtieth day after the publication of the proposal, as modified by Amendment No. 1, in the Federal Register. The revisions to the proposed rule change made by Amendment No. 1 do not raise any novel or substantive regulatory issues, and clarify the proposal. Therefore, the Commission finds good cause for approving the amended proposal on an accelerated basis.

#### IV. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change as modified by Amendment No. 1, including whether it 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-19 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.

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<sup>11</sup> See supra note 3.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

All submissions should refer to File Number SR-NYSE-2007-19. 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 the Exchange. 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-2007-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-NYSE-2007-19), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> Id.

<sup>14</sup> 17 CFR 200.30-3(a)(12).