

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57291; File No. SR-NYSE-2007-113)

February 7, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change to Amend Annual Fees Applicable to Groups of Real Estate Investment Trusts Under Common External Management

I. Introduction

On December 20, 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 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Annual Fees applicable to groups of Real Estate Investment Trusts (“REITs”) under common external management. The proposed rule change was published for comment in the Federal Register on January 4, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Section 902 of the Listed Company Manual by inserting proposed new Section 902.03A. In its filing, the Exchange stated that in a limited number of cases, a single entity or affiliated entities may externally manage more than one REIT. As an incentive for all of the REITs in such a group to list on the Exchange, the Exchange is proposing to offer a group discount on Annual Fees when there are at least three REITs under common external management.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57061 (December 28, 2007), 73 FR 0902.

REITs will continue to be subject to the Annual Fees applicable to listed equity securities as set forth in Section 902.03. However, Section 902.03A will provide that, where all of the operations of each of a group of three or more listed REITs are externally managed by the same entity or by affiliated entities, each REIT in the group will receive a 30% discount on the applicable Annual Fees in relation to any year in which the common management relationship exists as of January 1. A newly-listed REIT that qualifies for the discount will receive it in relation to the part of the year for which it pays a prorated Annual Fee upon initial listing. For example, a REIT that lists on July 1 and whose outstanding number of shares would subject it to a \$100,000 Annual Fee would normally pay a prorated amount of \$50,000 because it would be listed for exactly half of the first year of listing. If that REIT qualifies for the group discount, it would pay \$35,000 (70% of the prorated Annual Fee that would otherwise be payable). This filing seeks approval to apply the discount retroactively to January 1, 2008.

III. Discussion and Commission Findings

The Commission 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 exchange.⁴ In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁵ 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,⁶ which requires, inter alia, that the rules of a national securities exchange be designed to

⁴ In approving this proposed rule change, the Commission notes that it 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(b)(4)

⁶ 15 U.S.C. 78f(b)(5).

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 notes that the Exchange does not believe the limitation of the proposed discount to groups of three or more REITS under common external management is unfairly discriminatory. In support of this the Exchange states that: (i) it has a reasonable competitive justification for the discount; (ii) if it applied the discount to groups of less than three REITS it could lead to a significant loss of revenue to the Exchange; and (iii) it is not increasing the Annual Fees for REITs, and other, issuers. The Commission also notes that Exchange has represented that the loss of revenue from the discount, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

The Commission believes it is reasonable for the Exchange to balance its need to remain competitive, while at the same time ensuring adequate revenue to meet its regulatory responsibilities. The Commission further notes that the Annual Fees applicable to all other REITs and operating companies are remaining unchanged, so no company that is not qualified for the discount is being asked to pay higher Annual Fees than it is currently paying.

In light of these arguments, the Commission agrees that the proposed discount, which is retroactively effective to January 1, 2008, does not constitute an inequitable allocation of reasonable dues, fees, and other charges, does not permit unfair discrimination between issuers, and is generally consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NYSE-2007-113) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).