

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59313; File No. SR-NYSE-2009-03)

January 28, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Adopt Listing Fees for Securities Listed under Section 703.21 and 703.22 and Traded on NYSE Bonds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 9, 2009, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

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

The Exchange proposes to include a new section (proposed Section 902.10) in its Listed Company Manual (the “Manual”) establishing fees payable in connection with the listing of securities traded on NYSE Bonds that are listed under Section 703.21 (Equity-Linked Debt Securities) and Section 703.22 (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities). The filing also amends Section 902.09 to remove references to the securities that will be subject to the fees under proposed Section 902.10.

The text of the proposed rule change 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange 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. The Exchange 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

The Exchange proposes to include a new section (proposed Section 902.10) in the Manual establishing fees payable in connection with the listing of securities traded on NYSE Bonds that are listed under Section 703.21 and Section 703.22. The filing also amends Section 902.09 to remove references to the securities that will be subject to the fees under proposed Section 902.10.

Securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds are currently subject to the fees set forth in Section 902.09. Section 902.09 establishes a minimum initial listing fee of \$5,000 (for issuances of one million securities or fewer) and a maximum initial listing fee (for issuances in excess of 15 million securities) of \$45,000. The minimum annual listing fee under Section 902.09 is \$10,000 (for issues with 6 million securities outstanding or fewer) and the maximum annual listing fee is \$55,000 (for issues with more than 50 million securities outstanding). Under proposed Section 902.10, the initial listing fee for securities traded on NYSE Bonds and listed under Section 703.21 and 703.22 will be a flat fee of

\$5,000 regardless of the size of the issuance and the annual fee will be a flat fee of \$5,000 regardless of the number of securities outstanding.

The Exchange notes that no issuer will pay higher initial listing fees as a result of the adoption of Section 902.10, as the proposed flat initial listing fee of \$5,000 is the same as the current minimum charged under Section 902.09, and most issuers will pay less than would currently be the case under Section 902.09. All issuers will be subject to lower annual fees, as the proposed flat rate of \$5,000 is less than the current minimum of \$10,000 charged under Section 902.09. In order to be listed on NYSE Bonds, a security must have a \$1,000 denomination. Typically, index-linked securities and equity-linked securities with \$1,000 denominations are marketed to institutional investors rather than retail investors and, because these purchasers are less concerned that securities they invest in should have an exchange listing, these securities are generally not listed on a national securities exchange. Consequently, the Exchange is adopting a low level of listing fees for these securities because it believes doing so will make an exchange listing attractive in connection with offerings where listing is not crucial to a successful marketing of the securities. The Exchange notes that securities listed on NYSE Bonds do not have the benefit of a Designated Market Maker and, as such, the Exchange incurs lower regulatory and administrative costs in connection with such securities than would be the case with floor-traded securities. As such, the proposed fees are set at a level that reflects the lower costs incurred by the Exchange in connection with the trading of securities on NYSE Bonds than on the equities trading floor, while remaining attractive to issuers for whom an exchange listing is not crucial.

The Exchange recognizes that Section 902.09 was amended quite recently to add securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds to those subject to

the fees set forth in that section.³ However, since the adoption of that amendment and as of the date of submission of this filing, the Exchange has not listed any securities under Sections 703.21 and 703.22 and traded on NYSE Bonds and therefore no issuers have been charged those higher fees. For the reasons stated above, the Exchange has determined instead to apply the new fees established in this filing.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)⁴ 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 Exchange believes that the proposed new fees for securities traded on NYSE Bonds and listed under Sections 703.21 and 703.22 do not render the allocation of its listing fees inequitable in particular because no issuer will pay higher fees as a result of the adoption of Section 902.10 and most issuers will pay less than would currently be the case.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

³ See Exchange Act Release No. 58599 (September 19, 2008), 73 FR 55883 (September 26, 2008) (SR-NYSE-2008-56).

⁴ 15 U.S.C. 78f(b)(4).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2009-03 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-03. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the 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-2009-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Florence E. Harmon
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).