

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61333; File No. SR-NYSE-2009-117)

January 12, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Its Listing Fees for Structured Products

I. Introduction

On November 19, 2009, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending its maximum fee for structured products. The proposed rule change was published in the Federal Register on December 8, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to apply a maximum listing fee in any calendar year (including initial and annual listing fees) of \$500,000 in connection with the listing under Section 902.05 of the Listed Company Manual (the “Manual”) of any individual issuance of securities, with retroactive application to any securities listed on or after the date of November 19, 2009. Currently, Section 902.05 sets forth listing fees applicable to securities traded on the equity floor of the Exchange and listed under Section 703.18, the equity criteria set out in Section 703.19, and Section 703.21. Additionally, Section 902.05 provides that issuers of "retail debt securities" are subject to an annual maximum aggregate listing fee of \$500,000 for all retail debt securities issued

---

<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. 61091 (December 1, 2009), 74 FR 64797 (hereinafter referred to as “Notice”).

in a calendar year. Further, under Section 902.02 of the Manual, companies are subject to the maximum of \$500,000 per issuer for initial and annual fees payable on listed equity securities. Under Sections 902.02 and 902.05, the total maximum fee of \$500,000 billable to an issuer in a calendar year under the fee cap in Section 902.02 includes all annual fees billed to an issuer for listed retail debt securities. However, securities listed under Section 902.05, other than retail debt securities, are not subject to the maximum fees set forth in Section 902.02 or any maximum fee established in Section 902.05.

The Exchange proposes to establish a maximum fee in any calendar year (including both initial and annual listing fees) per issuance listed under Section 902.05 of \$500,000. In the Notice, the Exchange stated that by applying a maximum fee, the Exchange would rectify an anomaly under the Exchange's fee structure, whereby issuers of securities listed under Section 902.05 (other than retail debt securities), could pay fees in excess of \$500,000, while the fees for all other categories of securities would be capped. The Exchange further represented in its filing that it did not believe that any revenue it would forego as a result of the proposed fee cap would negatively affect its ability to fund its regulatory program.

### III. Discussion and Commission's Findings

After careful review, 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. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4) and (b)(5) of the Act,<sup>4</sup> which require, among other things, that the rules of an exchange (i) provide for the equitable allocation of reasonable dues, fees, and other charges

---

<sup>4</sup> 15 U.S.C. 78f(b)(4) and (b)(5).

among its members and issuers and other persons using its facilities, and (ii) are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted above, the NYSE fee cap for structured products listed under Section 902.05 of the Manual applies to any individual issuance of securities. This is in contrast to the \$500,000 maximum total fee billed to an issuer for generally all listed equity issuances in a calendar year.<sup>5</sup> According to the Exchange, it is appropriate to have a separate fee cap for each individual issuance of structured products, as many companies list multiple new classes of structured products within a calendar year, requiring the repeated utilization of the Exchange's operational and regulatory resources to a degree that is not normally the case with respect to equity securities subject to the cap under Section 902.02. Particularly, the Exchange states that no company will pay a higher initial or annual listing fees in connection with the listing of structured products as a result of the proposed amendment and some companies will pay less if their fees in relation to an individual structured product would exceed \$500,000 in the absence of the proposed cap.

Finally, the Exchange believes that the application of the maximum listing fee, as proposed, should be retroactively applied to any securities listed on or after November 19, 2009, as it will enable companies to benefit from the proposed fee cap without having to delay their listing until after Commission approval solely for the purpose of benefitting from the fee reduction.

Based on the above, the Commission believes that the Exchange's proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among issuers, in that it applies uniformly to all companies listing structured products. The Commission also believes that the proposal does not unfairly discriminate between issuers as all companies will be

---

<sup>5</sup> See Section 902.02 of the Manual.

subject to the same fee schedule. While the Commission recognizes that the fee cap proposal for structured products is applied per issuance, unlike the aggregated fee cap for all equity securities in Section 902.02, the Exchange has provided a reasonable justification for that difference and therefore, we find that it meets the requirements under Sections 6(b)(4) and 6(b)(5) of the Act. The Commission notes that the proposal caps the maximum amount payable by issuers for the listing of structured products. The Commission further notes that the Exchange has represented that despite any reduction, the Exchange will continue to have sufficient revenue to continue to adequately fund its regulatory activities. Finally, the Commission believes that the proposed maximum listing fees for structured products is appropriate and, as proposed by the Exchange, can be applied retroactively to any securities listed on or after November 19, 2009, because no company will be subject to increased fees as a result of the proposal and as noted above, some companies may pay less than currently required under the existing fees. Further, it will allow companies that have listed new classes of securities after the date of filing of this proposed rule change to benefit from any applicable reduction in listing fees. The Commission also notes that the change, including the retroactive effect, was published for notice and comment in the Federal Register and we did not receive any comments.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.<sup>6</sup>

---

<sup>6</sup> 15 U.S.C. 78f(b)(4). In approving the proposed rule change, the Commission has considered the proposed rule's impact in efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSE-2009-117) be, and it hereby is, approved.

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

Florence E. Harmon  
Deputy Secretary

---

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).