

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59560; File No. SR-NYSEALTR-2009-02)

March 11, 2009

Self-Regulatory Organizations; NYSE Alternext US LLC.; Order Approving Proposed Rule Change to Revise Listing Fees

I. Introduction

On January 8, 2009, NYSE Alternext US LLC (“NYSE Alternext” 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 to revise its listing fees. The proposed rule change was published in the Federal Register on February 4, 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 amending its initial listing fees for common stock or common stock equivalents. The initial listing fees set forth in Section 140 of the Exchange’s Company Guide for issuances of (i) less than five million shares would be increased from \$40,000 to \$50,000, (ii) five million to 10 million shares would be increased from \$50,000 to \$55,000, (iii) 10,000,001 shares to 15 million shares would be increased from \$55,000 to \$60,000 and (iv) in excess of 15 million shares would be increased from \$65,000 to \$70,000. The Exchange further

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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. 59304 (January 27, 2009), 74 FR 6077 (February 4, 2009) (hereinafter referred to as “Notice”).

proposes eliminating its \$5,000 application fee in connection with a company's initial listing on the Exchange.<sup>4</sup>

The Exchange also proposes eliminating the \$5,000 application processing fee in Section 140, payable in connection with the initial listing of a class of bonds of an issuer that does not have another class of securities listed on the Exchange. Additionally, Section 140 currently provides that, in the case of non-U.S. issuers listed on foreign stock exchanges, the fee, including the one-time, non-refundable application-processing fee of \$5,000, is \$40,000. The Exchange proposes to conform the initial listing fees charged to non-U.S. companies to those charged to domestic companies.

Effective January 1, 2010, the Exchange proposes to increase the annual fee for issuers that have between 50,000,001 and 75 million shares outstanding from \$32,500 to \$36,500 and for issuers with an excess of 75 million shares outstanding the annual fee would be raised from \$34,000 to \$40,000.<sup>5</sup> Moreover, as of the date of approval of this rule filing, issuers would be required to pay a supplemental annual fee equal to the difference between the amount they would pay in 2009 based on the current annual fee rates and the amount they would be required to pay if the 2010 annual fee rates were in place on January 1, 2009.

The Exchange further proposes eliminating Section 146 in its entirety and the provisions in Sections 140 and 142(g) that grants the Board of Directors of the Exchange the discretion to defer, waive or rebate all or any part of the initial listing fee payable in connection with any listing of securities or additional shares. The Exchange also proposes amending Section 142 of

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<sup>4</sup> The Exchange proposes to make conforming changes to Section 144 of the Company Guide to eliminate references to the application processing fee.

<sup>5</sup> The Exchange proposes to retain the minimum annual fee of \$27,500 for issuers with 50 million shares or less outstanding. Therefore, issuers with 50 million shares or less outstanding will not be subject to any annual fee increase for 2009.

the Company Guide by (i) increasing from \$60,000 to \$65,000 the maximum fee per issuer for listing additional shares in a calendar year and (ii) increasing from \$2,000 to \$2,500 the fee charged in connection with a company changing its name or ticker symbol.

The Exchange also proposes to adopt a fee of \$7,500 for technical original listings (“Technical Original Listings”) and reverse stock splits. The Exchange would apply the proposed \$7,500 application fee for a Technical Original Listing if the change in the company’s status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their equity position or rights.<sup>6</sup> The \$7,500 application fee would also apply to reverse stock splits. The Technical Original Listing fee will replace the current \$5,000 fee for “substitution listings” set forth in Section 142(d). The Technical Original Listing fee is intended to apply only to those events that would have previously been subject to the substitution listing fee.

Finally, the Exchange is amending the language of Section 142 to state that the fees in the section apply to non-U.S. companies. According to the Exchange, they have always applied the fees in Section 142 to non-U.S. companies, and therefore, this amendment clarifies the Exchange’s policy.

### 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

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<sup>6</sup> Minor technical amendments are being made to Rule 142(e) to reflect the fact that reincorporation will be explicitly included in the categories of events subject to the proposed Technical Original Listing fee.

Section 6(b)(4) of the Act,<sup>7</sup> which requires, among other things, that the rules of an exchange provide for equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

As discussed in the Notice, many of the Exchange's proposed fees, such as the initial listing fees for common stock or common stock equivalents, the maximum fee per issuer for listing additional shares in a calendar year, the fee charged in connection with a company changing its name or ticker symbol, and the Technical Original Listing fees are competitive with or substantially similar to the fees already in place at Nasdaq.<sup>8</sup> The Commission recognizes that competition for listings is becoming increasingly vigorous, and that such competition may help to ensure the reasonableness of fees among the markets vying for new listings.<sup>9</sup>

Moreover, as described in the Notice, the Exchange represented that it had increased services to listed companies and incurred increased costs for services and regulatory programs, which required changes to its listing fees.<sup>10</sup> The Exchange also cited different levels of services based on the number of outstanding shares to support the higher fees generally paid to the Exchange by larger companies and to provide justification for the proposed increases. Accordingly, the Commission believes that the Exchange's proposed fee increases are reasonable, given the current competitive landscape, the listing fees charged by Nasdaq, the services the Exchange offers issuers that choose to list with NYSE Alternext and the increased regulatory oversight costs noted by the Exchange. The Commission also believes it is reasonable

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<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See Notice, supra note 3.

<sup>9</sup> See Securities Exchange Act Release No. 55202 (January 30, 2007), 72 FR 6017 (February 8, 2007).

<sup>10</sup> See Notice, supra note 3. Additionally, some costs were offset by the elimination of the \$5,000 application fee.

for the Exchange to charge non-U.S. companies the same initial listing fees as domestic companies since, according to the Exchange, they receive the same level of service from the Exchange. For these reasons, the Commission believes the proposed fee changes meet the statutory standard of an equitable allocation of reasonable dues, fees and other charges among issuers.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.<sup>11</sup>

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSEALTR-2009-02) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</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).

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).