

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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASDAQ-2009-017 and should be submitted on or before April 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59559; File No. SR-NYSE-2009-03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Adopt Listing Fees for Securities Listed Under Section 703.21 and 703.22 and Traded on NYSE Bonds

March 11, 2009.

I. Introduction

On January 9, 2009, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the listing fees for securities that are listed under the Exchange's Listed Company Manual ("Manual") Sections

703.21 and 703.22 and are traded on NYSE Bonds. The proposed rule change was published for comment in the **Federal Register** on February 4, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, securities listed on the NYSE pursuant to Sections 703.21 (Equity-Linked Debt Securities) and 703.22 of the Manual (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities) and traded on NYSE Bonds are subject to the fees set forth in Section 902.09 of the Manual.⁴ Section 902.09 establishes various levels of fees based on the number of shares outstanding, with a minimum initial listing fee of \$5,000 (for one million securities or fewer) and a maximum initial listing fee of \$45,000 (for over 15 million securities). The minimum annual listing fee under Section 902.09 is \$10,000 (for 6 million securities or fewer), and the maximum annual listing fee is \$55,000 (for more than 50 million securities).

The Exchange proposes to establish a new section, proposed Section 902.10, in the Manual establishing fees payable in connection with the listing of securities that are listed under Section 703.21 and Section 703.22 and are traded on NYSE Bonds.⁵ Under proposed Section 902.10, the initial listing fee for securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds will be a flat fee of \$5,000 and the annual fee will be a flat fee of \$5,000, regardless of the number of securities outstanding.

The Exchange stated that it 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, in order to be listed on NYSE Bonds, a security must have a \$1,000 denomination, and typically, index-linked securities and equity-linked securities with \$1,000 denominations are marketed to institutional investors rather than retail

investors. Because these purchasers are less concerned that securities they invest in should have an exchange listing, the Exchange notes that these securities are generally not listed on a national securities exchange. In addition, 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. For the reasons noted above, the Exchange asserts that 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.

III. Discussion

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 and, in particular, the requirements of Section 6(b) of the Act⁶ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)⁷ and 6(b)(5)⁸ of the Act, which require 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, and are designed, among other things, to promote just and equitable just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.⁹

The Commission believes that the new fees set forth for securities listed under Sections 703.21 and 703.22 of the Manual and traded on NYSE Bonds are consistent with the Act. The Commission notes that the adoption of new Section 902.10 will not result in any issuer paying higher initial listing fees, as the proposed flat initial listing fee of \$5,000 is the same as the current minimum charged under Section 902.09. Accordingly, most issuers will

³ See Securities Exchange Act Release No. 59313 (January 28, 2009), 74 FR 6067.

⁴ The Exchange recently added securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds to those securities subject to the fees set forth in Section 902.09. See Securities Exchange Act Release No. 58599 (September 19, 2008), 73 FR 55883 (September 26, 2008) (SR-NYSE-2008-56).

⁵ The proposed rule change also amends Section 902.09 to remove references to the securities that will be subject to the fees under proposed Section 902.10.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 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).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

pay less than would currently be the case under Section 902.09. Similarly, 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. The Commission notes that the Exchange represents that, since it added securities listed under Sections 703.21 and 703.22 and traded on NYSE Bonds to Section 902.09 of the Manual,¹⁰ the Exchange has not listed any such securities, and therefore no issuers have been charged those higher fees.¹¹ The Commission also notes that the Exchange has stated that it incurs lower regulatory and administrative costs in connection with such securities and that the proposed fees are set at a level that reflects these lower costs. Therefore, the Commission expects that the reduced fees should not affect the Exchange's ability to finance its regulatory activities. Based on the above, the Commission believes the proposed fee changes meet the statutory standards¹² that exchange rules provide for an equitable allocation of reasonable dues, fees and other charges among issuers, and do not unfairly discriminate between issuers.

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSE-2009-03) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59560; File No. SR-NYSEALTR-2009-02]

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

March 11, 2009.

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")¹ and Rule 19b-4 thereunder,² a proposed rule change to revise its listing fees. The proposed rule change was published in the **Federal Register** on February 4, 2009.³ 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 proposes eliminating its \$5,000 application fee in connection with a company's initial listing on the Exchange.⁴

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 \$40,000.⁵ 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 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.⁶ 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

¹⁰ See *supra* note 4.

¹¹ See e-mail from John Carey, Chief Counsel—U.S. Equities, NYSE, to Sara Hawkins, Special Counsel, Division of Trading and Markets, Commission, dated March 9, 2009.

¹² See Sections 6(b)(4) and 6(b)(5) of the Act, 15 U.S.C. 78f(b)(4) and 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59304 (January 27, 2009), 74 FR 6077 (February 4, 2009) (hereinafter referred to as "Notice").

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

⁵ 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.

⁶ 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.