

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-68 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2008-68. 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 a.m. and 3 p.m. 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-2008-68 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58301; File No. SR-NYSE-2008-56]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Section 902.09 of the Listed Company Manual To Establish Fees for Securities Listed Under Sections 703.21 and 703.22 of the Listed Company Manual and Traded on NYSE Bonds and To Waive Fees for Structured Products Transferred From the Amex to the NYSE**

August 4, 2008.

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> notice is hereby given that, on July 24, 2008, the 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 amend Section 902.09 of the Listed Company Manual (the "Manual") to extend the initial and continued listing fees charged thereunder to securities listed under Section 703.21 (Equity-Linked Debt Securities) and Section 703.22 (Index-Linked Securities) and traded on NYSE Bonds. In addition, the Exchange proposes to waive, in connection with transfers to the NYSE from NYSE Alternext U.S.<sup>3</sup> after the closing of the purchase of the American Stock Exchange LLC (the "Amex") by NYSE Euronext (the "Merger"), (i) all fees payable under Section 902.08 in connection with such transfers, and (ii) in the case of securities that will be traded on NYSE Bonds, all fees payable under Section 902.09 in connection with such transfer, including the prorated annual fee payable for the calendar year in which the transfer occurs. The fee waiver described in the previous sentence will only apply (i) if such transfer occurs during the calendar year in which the Merger is

consummated and (ii) if the Merger is consummated no later than March 31, 2009.

#### **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 self-regulatory organization 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 NYSE 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 amend Section 902.09 of the Manual to extend the initial and continued listing fees charged thereunder to securities listed under Section 703.21 (Equity-Linked Debt Securities) and Section 703.22 (Index-Linked Securities) and traded on NYSE Bonds. In addition, the Exchange proposes to waive, in connection with transfers to the NYSE from NYSE Alternext U.S. after the closing of the Merger, (i) all fees payable under Section 902.08 in connection with such transfers, and (ii) in the case of securities that will be traded on NYSE Bonds, all fees payable under Section 902.09 in connection with such transfer, including the prorated annual fee payable for the calendar year in which the transfer occurs. The fee waiver described in the previous sentence will only apply (i) if such transfer occurs during the calendar year in which the Merger is consummated and (ii) if the Merger is consummated no later than March 31, 2009.

The Exchange has noted that it does not currently set forth in the Manual any listing fees for securities that are listed under either Section 703.21 (Equity-Linked Debt Securities) or Section 703.22 (Index-Linked Securities) and traded on NYSE Bonds. The Exchange has not previously listed any securities under Sections 703.21 or 703.22 that traded on NYSE Bonds and, as a consequence, this filing is adopting fees for such listings for the first time. We have determined that the most appropriate fee schedule for these securities is that set forth in Section 902.09.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> After the Merger, the name of the Amex will be changed to NYSE Alternext U.S. LLC and the revised rule text in Exhibit 5 reflects that name change.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

NYSE Euronext, the ultimate parent company of the Exchange, has agreed to acquire the Amex pursuant to an Agreement and Plan of Merger, dated as of January 17, 2008. It is currently anticipated that the acquisition will be consummated during the third quarter of 2008.<sup>4</sup> In connection with the acquisition, NYSE Euronext intends to discontinue the listing on NYSE Alternext U.S. of bonds and structured products issued in \$1,000 face amounts. To the extent that these securities qualify for listing under the applicable NYSE standards, the Exchange will encourage the issuers to apply to list those securities on the NYSE for trading on NYSE Bonds. As the issuers of these securities will already have paid listing fees to NYSE Alternext U.S. and will be transferring to the NYSE as a result of a business decision made by NYSE Euronext, the Exchange proposes to waive all listing fees that would be payable in connection with the listing of securities transferred from NYSE Alternext U.S. and traded on NYSE Bonds, including securities listed under Sections 703.19, 703.21 and 703.22<sup>5</sup>. This waiver will only take effect upon consummation of NYSE Euronext's acquisition of the Amex.

The Exchange believes the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory, in particular because, after the Merger, NYSE Regulation, Inc. ("NYSE Regulation") will perform listed company regulation for both the Exchange and NYSE Alternext U.S., including a substantial review of companies upon original listing. Many of the regulatory staff who currently perform initial and continued listing reviews at the Amex will become employees of NYSE Regulation at the time of the Merger and will continue to perform the same duties with respect to Amex companies after the Merger. Securities transferring from NYSE Alternext U.S. will be subjected to the same rigorous regulatory review as any other applicant for listing on the Exchange. However, the Exchange expects that, on average, the review of

securities transferring from NYSE Alternext U.S. to the Exchange will be less costly than the review of a transfer from an unaffiliated market, as the Amex listing regulatory staff that will have been absorbed by NYSE Regulation will already have performed a substantial review of any Amex-listed company, and NYSE Regulation will be able to rely on that prior work as a baseline in qualifying the company for listing on the Exchange and in conducting ongoing compliance activities with respect to any such company. Furthermore, the Exchange anticipates that the revenue it foregoes as a consequence of this waiver will be an immaterial amount that would not have any impact on its ability to finance its regulatory activities. In addition, in light of the low level at which fees are set for listing on NYSE Bonds, the associated loss of revenue will be immaterial and will not impact the Exchange's ability to finance its regulatory activities.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>6</sup> 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 fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory because it is simply a recognition of the fact that companies transferring their listing from NYSE Alternext U.S. will already have paid fees to another exchange which will, upon consummation of the acquisition, be under the same ownership as the Exchange. The Exchange believes that the fee waiver is appropriate because the same regulatory staff will review securities on all three markets and the Exchange will therefore benefit from regulatory efficiencies arising out of NYSE Regulation's prior examination of any companies that transfer. In addition, in light of the low level at which fees are set for listing on NYSE Bonds, the associated loss of revenue will be immaterial and will not impact the Exchange's ability to finance its regulatory activities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Written comments were neither solicited nor received.

## 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 such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-56 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2008-56. 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

<sup>4</sup> The members of the Amex voted to approve the transaction on June 17, 2008. No vote of the NYSE Euronext shareholders is required. The sole remaining condition to the consummation of the transaction is the approval by the Division of Trading and Markets of certain rule filings the NYSE and Amex expect to submit in the near future.

<sup>5</sup> As annual fees for listed securities are calculated based on the number of securities outstanding on January 1 and billed on an annual basis, the proposed fee waiver will not apply to additional securities of a class that has been transferred from NYSE Alternext U.S. that are issued after the date of transfer.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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 a.m. and 3 p.m. Copies of such 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-2008-56 and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58303; File No. SR-NYSE-2008-62]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Sections 305 and 308 and the Shareholder Rights Provisions of Section 314 of the Listed Company Manual

August 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 28, 2008, the New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to eliminate Sections 305 ("Concentration of Voting Power") and 308 ("Defensive Tactics") and the shareholder rights provisions of Section 314 ("Special Rights of Certain Shareholders") of the Exchange's Listed Company Manual (the "Manual"). 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.

#### 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. 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 eliminate from its Manual Sections 305 ("Concentration of Voting Power") and 308 ("Defensive Tactics") and the shareholder rights provisions of Section 314 ("Special Rights of Certain Shareholders"). Section 305 provides that, while a significant concentration of a company's common stock in one holding is not a bar to listing, the Exchange will consider the existence of such a concentrated position in rendering a decision to list that company. Section 308 deals with provisions that discriminate among shareholders or nullify or reduce the voting power of common stockholders. Section 314 expresses the Exchange's concern about the existence of special rights limited to one shareholder or a group of shareholders, such as the right to sell stock back to the company or preemptive rights (*i.e.*, the right to purchase stock from the company at the time of any sale to any other party, so as to maintain that shareholder's proportionate interest in the company).<sup>3</sup>

The Exchange proposes to retain the related party transaction policy of Section 314. However, the Exchange proposes to delete that part of Section 314 which pertains to shareholder rights, as well as the entirety of Sections 305 and 308. The provisions that the Exchange proposes to eliminate each embody Exchange policies in relation to shareholder rights. As such, the Exchange believes that these rules no longer serve any purpose as they are superseded by the Exchange's shareholder rights policy as set forth in Section 313.

In 1994, at the suggestion of then SEC chairman Arthur Levitt, the NYSE, the American Stock Exchange (the "Amex") and NASD each agreed to adopt a uniform policy (the "Uniform Voting Rights Policy") with respect to the voting rights of common stockholders.<sup>4</sup> The NYSE adopted the Uniform Voting Rights Policy as an amendment to the Exchange's existing voting rights policy, Section 313 of the Manual. The NYSE adopted Section 313 in its earlier form in 1989,<sup>5</sup> intending that it would constitute the Exchange's only voting rights policy. To that end, the Exchange included in its filing in relation to the adoption of Section 313 a proposal to eliminate Section 308 of the Manual on the basis that it dealt with the same sorts of issues as Section 313 and was therefore redundant and superseded by Section 313. In approving Section 313 in 1989, the SEC stated that it was "still reviewing [the Section 308] portion of the proposal" and was therefore not approving the elimination of Section 308 at that time.

When the exchanges adopted the Uniform Voting Rights Policy, it was the Commission's stated intention that it would result in a uniform industry-wide approach to voting rights issues. In light of this philosophical approach, the Exchange has long believed that Sections 305, 308 and the shareholder rights provisions of Section 314 have been superseded by the Uniform Voting Rights Policy and that it is appropriate to consider shareholder rights issues solely in the context of Section 313. In the Exchange's experience, the continued presence of these provisions in the Manual causes occasional confusion among issuers and their

transactions. The Exchange does not propose to eliminate these provisions in this filing. However, the Exchange is making some nonsubstantive changes to these provisions.

<sup>4</sup> See Securities Exchange Act Release No. 35121 (December 19, 1994), 59 FR 66570 (December 27, 1994) (SR-NYSE-94-20).

<sup>5</sup> See Securities Exchange Act Release No. 27554 (December 20, 1989), 54 FR 53227 (December 27, 1989) (SR-NYSE-89-16).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Section 314 also states an Exchange policy that an appropriate body within the company should examine the appropriateness of related party