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.

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 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–2009–03 and should be submitted on or before February 25, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2253 Filed 2–3–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59304; File No. SR–NYSEALTR–2009–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Alternext US LLC To Revise Its Listing Fees

January 27, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on January 8, 2009, NYSE Alternext US LLC (''NYSE Alternext'' or the ''Exchange'') filed with the Securities and Exchange Commission the proposed rule changes 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 proposed rule changes from interested persons.

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

The Exchange proposes to revise its listing fees. The text of the proposed rule change is available on the Exchange's Web site at (*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 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. NYSE Alternext 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

Following the October 2008 acquisition by NYSE Euronext of NYSE Alternext's predecessor entity, the American Stock Exchange, NYSE Euronext management reexamined NYSE Alternext's listing fees in light of the cost of providing services to listed companies on an ongoing basis and the fees charged by competitor exchanges. In particular, the Exchange notes that it is now providing listed companies with a suite of services similar to services provided to listed companies by the New York Stock Exchange (''NYSE''), which is also a subsidiary of NYSE Euronext. These services, which the Exchange has either already begun providing or will roll out in early 2009, include: A daily summary of trading activity in a listed company's stock delivered at the end of each trading day to the company's executives (''market focus reports''); a summary of relevant market information delivered each morning with analysis of what may happen in the equity markets that day; access to NYSENet, which is a web-based system that provides listed companies with easy access to detailed trading data updated intraday on a real-

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

time basis; and *eGovDirect.com,* a secure web-based system enabling companies to submit certifications to the Exchange electronically. To recoup the cost of providing these services and, more generally, in response to increased costs in its continuing service and regulatory programs, the Exchange proposes to make a number of changes to its listing fees.

The Exchange proposes to amend 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 will be increased from $40,000 to $50,000, (ii) five million to 10 million shares will be increased from $50,000 to $55,000, (iii) 10,000,001 shares to 15 million shares will be increased from $55,000 to $60,000 and (iv) in excess of 15 million shares will be increased from $65,000 to $70,000. The Exchange currently charges a nonrefundable $5,000 application fee in connection with a company's initial listing on the Exchange. The Exchange proposes to eliminate this application fee [4] and notes that, as a consequence, any company paying the increased initial listing fee in connection with the listing of five million shares or more at the time of first listing on the Exchange will not pay a higher aggregate fee to the Exchange as the initial listing fee increase of $5,000 is offset by the elimination of the application fee.[5] The Exchange also notes that the proposed minimum initial listing fee of $50,000 for up to five million shares is the same as the Nasdaq Capital Market minimum fee for issuances of up to 15 million shares, while the proposed maximum fee of $70,000 for more than 15 million shares is less than the $75,000 maximum initial listing fee charged by Nasdaq Capital Market for listing in excess of 15 million shares.[6] As such, the Exchange believes that the proposed amended initial listing fees are competitive with those of other markets. In addition, the Exchange believes that it is appropriate to charge companies different amounts based on the number of shares listed, as the Exchange provides different levels of services to companies based on their size. For example, only larger companies are provided with the market focus reports described above.

The Exchange notes that it is extremely difficult to establish listing fee schedules on the basis of market capitalization as stock prices are inherently volatile. As a consequence, all of the major national securities exchanges use the number of shares outstanding as a proxy for a company's size in establishing fee schedules, as, much of the time, the number of shares a company has outstanding provides a reasonable guide as to its size.

Section 140 provides for a $5,000 application processing fee 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. The Exchange proposes to eliminate this fee.

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. The Exchange believes it is appropriate to charge these non-U.S. companies as much as other companies as they receive the same level of service from the Exchange and therefore are as costly to service on an ongoing basis as any other company of similar size. Accordingly, the Exchange believes that by charging non-U.S. companies the same fees as domestic companies it will be providing for a more equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities.

Section 141 of the Company Guide currently provides that issuers must pay a minimum annual fee of $27,500 if the issuer has 50 million shares or less outstanding. If the issuer has from 50,000,001 to 75 million shares outstanding, the current annual fee is $32,500. If the issuer has in excess of 75 million shares outstanding, the current annual fee is $34,000. 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. With effect from 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 in excess of 75 million shares outstanding the annual fee will be raised from $34,000 to $40,000. As of the date of approval of this rule filing, issuers will 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. As with initial listing fees, the Exchange notes that larger companies receive more services from the Exchange and it is therefore justifiable to charge them higher annual fees to recoup the related expenses. For example, only larger companies are provided with the market focus reports described above.

Sections 140 and 146 of the Company Guide contain provisions that grant 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. Section 142(g) grants the Board of Directors the same discretion to defer, waive or rebate all or any part of the fees payable for the listing of additional shares. The Exchange proposes to eliminate these provisions in Sections 140 and 142(g) and to eliminate Section 146 in its entirety. The Exchange has not exercised this discretion recently and has concluded that it is no longer relevant to its strategy going forward.

The Exchange proposes to amend 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, which is the maximum imposed by Nasdaq Capital Market and Nasdaq Global Market, and (ii) increasing from $2,000 to $2,500 the fee charged in connection with a company changing its name or ticker symbol, which is also the fee charged by Nasdaq Capital Market and Nasdaq Global Market for changes of this nature. The Exchange also proposes to amend Section 142 to adopt a fee of $7,500 for technical original listings (''Technical Original Listings'') and reverse stock splits. The Exchange will 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

[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 notes that companies listing less than five million shares at the time of initial listing will be charged an initial listing fee that is $10,000 higher than is currently the case, giving rise to a net fee increase of $5,000 after taking into account the elimination of the application processing fee. In addition, the Exchange notes that companies that have previously listed a class of stock or warrants on the Exchange that are listing an additional class of securities would not have been required to pay the application processing fee in connection with the listing of the second class.

[6] The initial listing fee for issuers listing less than five million shares is increasing by $10,000, while the fees for the other tiers are increasing by just $5,000. The Exchange believes that this larger increase is necessary to cover the costs of regulatory review and use of operational resources which are essentially fixed in relation to any new listing regardless of the company's size.

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. For example, a change in a company's state of incorporation or a reincorporation or formation of a holding company that replaces a listed company would be considered a Technical Original Listing.[7] The $7,500 application fee will also apply to a reverse stock split. 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. The Exchange has changed the fee's name and provided more detail as to when it is applicable in order to better inform companies as to when it is applicable and to conform to the comparable rule of the NYSE.[8] Nasdaq Capital Market and Nasdaq Global Market have a fee set at the same $7,500 level for ''substitution listing events,'' which is applicable in the same circumstances as the Technical Original Listing fee.[9] The Exchange believes that the increases in the various fees charged under Section 142 referenced in this paragraph are justified by the increasing cost of providing services to companies and in particular the cost of the Exchange's utilization of staff operational resources in making changes required by the events giving rise to the applicable fees. The Exchange also notes that the increased fees are set at the same level as those of Nasdaq Capital Market and Nasdaq Global Market and are therefore reasonable in light of the charges imposed by competitor exchanges. The Exchange is amending the language of Section 142 to state that the fees in that section apply to non-U.S. companies. As the fees in Section 142 have always applied to non-U.S. companies, this amendment is simply a clarification and not a substantive change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[10] of the Act in general and Section 6(b)(4) of the Act[11] in particular, in that it is designed to 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 proposal does not constitute an inequitable allocation of dues, fees and other charges as the proposed fees are set at levels that are competitive with those already in place at Nasdaq Capital Market and Nasdaq Global Market and, to the extent different levels of fees are charged to companies of different sizes, the differential fees are reasonable in light of the different levels of service devoted to companies based on their size. Accordingly, the Exchange believes that the proposal provides for an equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities.

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 purpose of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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–NYSEALTR–2009–02 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–NYSEALTR–2009–02. 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 such filing will also 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 No. SR–NYSEALTR–2009–02 and should be submitted on or before February 25, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–2250 Filed 2–3–09; 8:45 am]

BILLING CODE 8011–01–P

[7] Minor technical amendments are being made to Rule 142(e) to reflect the fact that reincorporations will be explicitly included in the categories of events subject to the proposed Technical Original Listing fee.

[8] *See* Section 902.03 of the NYSE Listed Company Manual.

[9] *See* Nasdaq Marketplace Rules 4510(f) (for the Nasdaq Global Market fee) and 4520(e) (for the Nasdaq Capital Market fee).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 17 CFR 200.30–3(a)(12).