



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96556; File No. SR-NYSE-2022-57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase Certain Annual Listing Fee Set Forth in Section 902.03 of the NYSE Listed Company Manual

December 21, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on December 16, 2022, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend Section 902.03 of the NYSE Listed Company Manual (the “Manual”) to amend certain of its annual fees charged to listed issuers. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, 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 those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain of its annual fees charged to listed issuers as set forth in Section 902.03 of the Manual. The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2023. The proposed increases in the annual fees reflect increases in the costs the Exchange incurs in providing services to listed companies on an ongoing basis, as well as increases in the costs of conducting its related regulatory activities. As described below, the Exchange proposes to make the proposed fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

The annual fee for each class of equity security listed on the Exchange is equal to the greater of the minimum fee or the fee calculated on a per share basis.

The Exchange currently charges an annual fee of \$0.00117 per share for each of the following: a primary class of common shares (including Equity Investment Tracking Stocks); each additional class of common shares (including tracking stock); a primary class of preferred stock (if no class of common shares is listed); each additional class of preferred stock (whether primary class is common or preferred shares); and each class of warrants or rights. The Exchange proposes to change the per share annual fee for the foregoing classes of securities from \$0.00117 per share to \$0.001215 per share.

The current minimum annual fee for a primary class of common shares (including Equity Investment Tracking Stocks) or a primary class of preferred stock (if no class of common shares is listed) is \$74,000. The Exchange proposes to change this minimum annual fee from \$74,000 to \$80,000.

Notwithstanding the fact that the Exchange proposes to increase the per share fee rate applicable to all classes of equity securities set forth in Section 902.03, the Exchange does not propose to increase the minimum annual fees charged for additional classes of common shares (including tracking stocks), preferred stocks that are not the primary listed equity security, or warrants or rights. The Exchange believes that the benefits issuers receive in connection with those listings are consistent with the current minimum fee levels, as those types of listings do not generally entitle issuers to the types of services provided in connection with a primary common stock listing or primary preferred stock listing and the Exchange has therefore not incurred the same level of cost increase associated with them. In addition, their issuers generally also have a primary common stock listing on the Exchange that will be subject to the increased minimum annual fee of \$80,000 and the Exchange believes that this increased minimum fee is sufficient to encompass any increases in minimum costs associated with any such issuer.

The revised annual fees will be applied in the same manner to all issuers with listed securities in the affected categories and the Exchange believes that the changes will not disproportionately affect any specific category of issuers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4)⁵ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Section 902.03 to increase the annual fees for the various categories of equity securities as set forth above because of the increased costs incurred by the Exchange since it established the current rates.

The Proposed Changes are Reasonable

The Exchange believes that the proposed changes to its annual fee schedule are reasonable. In that regard, the Exchange notes that its general costs to support its listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies. Specifically, the Exchange has (among other things) increased expenditure on listed companies and the value of an NYSE listing by: making improvements to NYSE Connect, an online service that provides listed companies with access to in-depth information to better understand the trading of their securities; increasing the value of products and services available to qualified listed companies under Section 907.00 of the Manual;⁷ and launching the NYSE Institute, whose focus includes providing thought leadership and advocacy on behalf of listed companies.

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities affected by the proposed annual fee adjustments. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS,⁸ the Commission highlighted the importance of market forces in determining prices and SRO

⁷ See Securities Exchange Act Release No. 94222 (February 10, 2022); 87 FR 8886 (February 16, 2022) (SR-NYSE-2021-68).

⁸ Release No. 34-51808 (June 9, 2005); 70 FR 37496 (June 29, 2005).

revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁹

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the adoption of the proposed increase to the annual fees for various categories of equity securities represents a reasonable attempt to address the Exchange’s increased costs in servicing these listings while continuing to attract and retain listings.

The Exchange proposes to make the aforementioned fee increases in Section 902.03 to better reflect the value of such listing to issuers.

Notwithstanding the fact that the Exchange proposes to increase the per share fee rate applicable to all classes of equity securities set forth in Section 902.03, the Exchange does not propose to increase the minimum annual fees charged for additional classes of common shares (including tracking stocks), preferred stocks that are not the primary listed equity security, or warrants or rights. The Exchange believes that the benefits issuers receive in connection with those listings are consistent with the current minimum fee levels, as those types of listings do not generally entitle issuers to the types of services provided in connection with a primary common stock listing or primary preferred stock listing and the Exchange has therefore not incurred the

⁹ See Regulation NMS, 70 FR at 37499.

same level of cost increase associated with them. In addition, their issuers generally also have a primary common stock listing on the Exchange that will be subject to the increased minimum annual fee of \$80,000 and the Exchange believes that this increased minimum fee is sufficient to encompass any increases in minimum costs associated with any such issuer.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed amendments to the annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the amount of certain of the minimum fees and per unit rates to reflect increased operating costs. Similarly, as the fee structure remains effectively unchanged apart from the proposed increases in the rates paid by all issuers, the changes to annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers of primary classes of common shares (including Equity Investment Tracking Stocks) because the same increases will apply to all such issuers. The Exchange does not propose to increase the minimum annual fees charged for additional classes of common shares (including tracking stocks), preferred stocks that are not the primary listed equity security, or warrants or rights. For the reasons described above under the heading “The Proposed Changes are Reasonable,” the Exchange believes that this is not unfairly discriminatory to the issuers of primary classes of common shares (including Equity Investment Tracking Stocks).

Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange’s fees are

unreasonable it can decide either not to list its securities or to list them on an alternative venue.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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 Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition.

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition.

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁰ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 email to rule-comments@sec.gov. Please include File Number SR-NYSE-2022-57 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-2022-57. This file number should be included on the subject line if email 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 website (<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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2022-57 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,

Assistant Secretary.

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¹¹ 17 CFR 200.30-3(a)(12).