



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99256; File No. SR-NYSEAMER-2023-64]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Adopt New Section 145a of the NYSE American Company Guide

December 29, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 21, 2023, NYSE American LLC (“NYSE American” 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 adopt new Section 145a of the NYSE American Company Guide (the “Company Guide”) to implement a flat original listing and annual fee for Acquisition Companies (as defined below). 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 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 adopt new Section 145a of the Company Guide to implement a flat original listing and annual fee for companies that are listed on the Exchange pursuant to Sec. 119 (Listing of Companies Whole Business Plan is to Complete One or More Acquisitions) of the Company Guide (“Acquisition Companies”). The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2024.

The Exchange currently charges Acquisition Companies original and annual listing fees based on a tiered fee schedule that is applicable to companies listing equity securities on the Exchange. The original and annual listing fees are calculated based on shares outstanding.³ Commencing January 1, 2024, the Exchange proposes to charge Acquisition Companies a flat original and annual listing fee of \$85,000.

The Exchange proposes to make this change to better reflect the value of such listing to Acquisition Companies. In particular, the Exchange believes it is reasonable to apply a flat original and annual listing fee for Acquisition Companies because the value of the listing for an Acquisition Company, given the limited scope of operation (unlike operating companies) and the requirement to engage in a merger or acquisition with one or more unidentified companies within 36 months of the effectiveness of the Acquisition Company’s IPO registration statement, is

³ See Sec. 140 (Original Listing Fees) and Sec. 141 (Annual Fees) of the Company Guide. The Exchange currently charges original and annual listing fees on a tiered basis, based on the number of shares outstanding. With respect to original listing fees, issuers currently pay \$50,000 if they have less than 5,000,000 shares outstanding, \$55,000 if they have 5,000,000 to 10,000,000 shares outstanding, \$60,000 if they have 10,000,001 to 15,000,000 shares outstanding and \$75,000 if they have in excess of 15,000,000 shares outstanding. With respect to annual listing fees, issuers currently pay \$55,000 if they have 50,000,000 shares or less outstanding and \$75,000 if they have in excess of 50,000,000 shares outstanding.

substantially similar regardless of the number of shares the Acquisition Company has outstanding.

As revised, all Acquisition Companies listed on the Exchange would pay the same original and annual listing fee and will pay a higher fee under the proposed flat fee than under the current rate. The Exchange believes that the adoption of a flat initial and annual fee for Acquisition Companies of \$85,000 is not unfairly discriminatory because the value of the listing to an Acquisition Company is substantially similar regardless of the number of shares that an Acquisition Company has outstanding. In addition, the Exchange believes that it is not unfairly discriminatory for Acquisition Companies to pay a higher original and annual listing fee than is paid by other companies listing on the Exchange. Due to the substantial increase in new listings of Acquisition Companies on the Exchange over the last several years, the Exchange has devoted additional resources to review Acquisition Company IPOs, post-listing shareholder meeting requests, and subsequent business combination transactions. In particular, the Exchange notes that business combination transactions have become increasingly complex and require greater levels of analysis. Historically, many Acquisition Companies seeking to list on the Exchange have shares outstanding that placed them in the upper tiers of the current original listing fee structure. Therefore, the Exchange believes that adopting a flat original listing fee will represent an increase that is directly proportional to the resources devoted to Acquisition Companies.

In adopting a flat original and annual listing fee for Acquisition Companies, the Exchange notes that it is mirroring the fee structure in place on the New York Stock Exchange and the Nasdaq Stock Market (which charges Acquisition Companies the same flat entry and annual listing fee regardless of whether such Acquisition Company is listed on the Nasdaq Global Select, Nasdaq Global or Nasdaq Capital Market). The Exchange believes it is appropriate to align its fee structure for Acquisition Companies with the fee structure in place on other national securities exchanges, even if the proposed fee structure results in Acquisition Companies paying higher entry or annual listing fees than they do currently. To that end, the

Exchange notes that its proposed fee and fee structure for Acquisition Companies is comparable to that of other exchanges in that (i) the value of a listing to an Acquisition Company is the same regardless of the exchange on which it is listed, and (ii) no exchange provides Acquisition Companies with complimentary services (unlike certain categories of operating companies). Therefore, the Exchange believes it is appropriate for its fee structure to be aligned with the fee structures in place on other listing venues.⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4)⁶ 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,⁷ 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 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 adopt new Sec. 145a of the Company Guide to enact a flat original and annual listing fee for Acquisition Companies.

The Exchange believes that the proposed changes to its original and annual fees for

⁴ See, for example, Section 902.11 of the NYSE Listed Company Manual and Nasdaq Rules 5910(a)(1)(B), 5910 (b)(2)(F), 5920(a)(1)(B) and 5920(b)(2)(G). The Exchange notes that Acquisition Companies listed on the New York Stock Exchange pay a flat initial and annual fee of \$85,000.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

Acquisition Companies are reasonable. The Exchange operates in a highly competitive marketplace for the listing of Acquisition Companies. 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 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.

The Exchange believes the proposed change to apply a flat original and annual listing fee for all Acquisition Companies is reasonable, and not unfairly discriminatory, because the value of the listing to an Acquisition Company, and the Exchange’s costs in regulating and supporting the listing of an Acquisition Company, is substantially similar regardless of the number of shares that an Acquisition Company has outstanding. As revised, all Acquisition Companies listed on the Exchange would pay the same original and annual listing fee and will pay a higher fee under the proposed flat fee than under the current rate. The Exchange believes that the adoption of a flat initial and annual fee for Acquisition Companies is not unfairly discriminatory because the value of the listing to an Acquisition Company is substantially similar regardless of the number of shares that an Acquisition Company has outstanding. In addition, the Exchange believes that

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

⁹ See Regulation NMS, 70 FR at 37499.

it is not unfairly discriminatory for Acquisition Companies to pay a higher original and annual listing fee of \$85,000 than is paid by other companies listing on the Exchange. Due to the substantial increase in new listings of Acquisition Companies on the Exchange over the last several years, the Exchange has devoted additional resources to review Acquisition Company IPOs, post-listing shareholder meeting requests, and subsequent business combination transactions. In particular, the Exchange notes that business combination transactions have become increasingly complex and require greater levels of analysis. Historically, many Acquisition Companies seeking to list on the Exchange have shares outstanding that placed them in the upper tiers of the current original listing fee structure. Therefore, the Exchange believes that adopting a flat original listing fee of \$85,000 will represent an increase that is proportional to the resources devoted to Acquisition Companies

Pricing for the listing of similar securities on other national securities exchanges was also considered, and, for the reasons discussed above in the Purpose section, the Exchange believes that the proposed flat original and annual listing fee is reasonable given the competitive landscape.

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 market for listing services is extremely competitive and listed companies may freely choose alternative venues. For this reason, the Exchange does not believe the proposed rule change will result in any burden on competition for listings. The Exchange also does not believe that the proposed rule change will have any meaningful impact on competition among listed companies because all similarly situated companies will be charged the same fee

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-NYSEAMER-2023-64 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-NYSEAMER-2023-64. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

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 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 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2023-64 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Christina Z. Milnor,

Assistant Secretary.

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¹¹ 17 CFR 200.30-3(a)(12).