

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70971; File No. SR-NYSE-2013-68)

December 3, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Section 907.00 of the Listed Company Manual to Expand the Suite of Complimentary Products and Services that are Offered to Listed Companies

I. Introduction

On October 1, 2013, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change amending Section 907.00 of the Listed Company Manual (“Manual”) to expand the suite of complimentary products and services that are offered to all listed issuers and to certain current and newly listed issuers. The proposed rule change was published for comment in the Federal Register on October 22, 2013.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Section 907.00 of the Manual to expand the suite of complimentary products and services that it offers to certain listed companies. Under current Exchange rules, all listed issuers receive some complimentary products and services through NYSE Market Access Center; however, certain tiers of currently listed issuers and newly listed issuers receive additional products and services. As specifically set forth in Section 907.00 of the Manual, the Exchange offers products and services in the following general categories to

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 70628 (Oct. 8, 2013), 78 FR 62889 (“Notice”).

certain current and newly listed companies: market surveillance, web-hosting, market analytics and news distribution. According to the NYSE, the available products and services have approximate commercial values ranging from \$10,000 to \$45,000 annually.<sup>5</sup> The complimentary products and services are offered to companies under a tiered system based on shares issued and outstanding for currently listed companies, or global market value for newly listed companies.

With respect to currently listed companies, companies that have more than 270 million shares issued and outstanding (a “Tier One Company”) are offered (i) a choice of market surveillance or market analytics products and services, and (ii) web-hosting products and services on a complimentary basis. Companies that have between 160 million and 269.9 million shares issued and outstanding (a “Tier Two Company”) are offered a choice of market analytics or web-hosting products and services.

For newly listed companies, the Exchange offers different product and service options for an initial period of two years based on such company’s global market value. A company with a global market value of \$400 million or more (a “Tier A Company”) is offered (i) a choice of market surveillance products and services for a period of twelve months or market analytics products and services for a period of 24 months, and (ii) web-hosting and news distribution products and services for a period of 24 months. Newly-listed companies with a global market value of less than \$400 million (a “Tier B Company”) are offered web-hosting and news distribution products and services for a period of 24 months.

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<sup>5</sup> Section 907.00 of the Manual currently states that the market surveillance products and services have a commercial value of approximately \$45,000 annually, web-hosting products and services have a commercial value of approximately \$12,000-\$16,000 annually, market analytics products and services have a commercial value of approximately \$20,000 annually and news distribution products and services have a commercial value of approximately \$10,000 annually.

The Exchange has proposed to amend Section 907.00 of the Manual to add three additional categories of complimentary products and services that will be offered to listed companies in the various tiers as described below. Specifically, the Exchange proposes to include corporate governance tools and advisory services (the “Enhanced Package”), which the Exchange states has a commercial value of approximately \$45,000 annually, and corporate governance tools (the “Basic Package”), which the Exchange states has a commercial value of approximately \$20,000 annually, to the list of complimentary products and services offered to certain listed companies. Further, the Exchange has proposed to offer data room services and virtual investor relation tools,<sup>6</sup> which the Exchange states has a commercial value of approximately \$15,000-\$20,000 annually, to the list of complimentary products and services offered to all listed companies. The Enhanced Package will be offered to Tier One Companies as a third alternative to the market surveillance and market analytics products they are already offered. The Basic Package will be offered to Tier Two Companies as a third alternative to the market analytics and web-hosting products they are already offered. The Basic Package also will be offered to Tier A Companies as a second alternative to the market analytics products and services that are offered for a 24-month period. The data room services and virtual investor relation tools will be offered to all listed companies on an annual basis. The Exchange has proposed to offer these tools through an affiliated service provider and may engage additional third-party providers in the future.

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<sup>6</sup> In its filing, the NYSE explained that a data room is a password-protected website used for document storage. It is typically used to store due diligence materials to be reviewed in connection with transactional activity. Virtual investor relations tools are websites used to present roadshows and other investor presentations on a short-term basis, typically in connection with a specific transaction.

The Basic Package, offered to Tier Two and Tier A Companies, will consist of a combination of governance, risk, compliance and board tools for company directors and executives. In its filing, the Exchange noted that it expects that these tools will provide generic, easily implemented corporate governance advice and/or educational tools that are applicable to a wide range of listed companies.

The Enhanced Package, offered to Tier One Companies, will offer the same tools as the Basic Package but will also include access to advisory services. In its filing, the NYSE noted that such advisory services may include ongoing, periodic review of a company's corporate governance policies as well as benchmarking such policies against a company's peer group. In support of this change, the Exchange stated that the advisory services will offer companies a more individualized assessment of their corporate governance practices particular to the specific nature of their industry and organization.

As noted above, the specific tools and services offered by these products will be developed by the Exchange, through an affiliated service provider, or by third-party vendors. Companies that are offered these products are under no obligation to accept them and a company's listing on the Exchange is not conditioned upon acceptance of any product or service. According to the Exchange, from time to time, companies elect to purchase products and services from other vendors at their own expense rather than accepting comparable products and services offered by the Exchange.

Moreover, according to the Exchange, the proposed expansion of additional complimentary products and services will not benefit any category of listed companies over another one. Further, according to the Exchange, the additional Enhanced and Basic Packages discussed above will not increase the overall value of complimentary products and services

offered to companies within each tier and are simply being offered as an additional alternative choice. The Commission also notes that under the proposal the data room services and virtual investor relation tools are being offered equally to all listed companies.

### III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Commission believes it is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act<sup>9</sup> in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to give issuers under Tier One the option of receiving corporate governance tools and advisory services as an alternative to market surveillance or market analytics products and services, and in addition to the other products and services they are currently offered, as well as to allow issuers under Tier Two and Tier A the option of receiving corporate governance tools as an alternative, and in addition, to the other products and services they are currently offered. In addition, the Commission believes that it is consistent with the Act for the Exchange to offer the data room

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<sup>7</sup> 15 U.S.C. 78f. 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).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

services and virtual investor relation tools to all listed issuers, irrespective of whether they are eligible for additional services under a tier. The Exchange has represented that it faces competition in the market for listing services, and it competes in part by improving the quality of the services that it offers to listed companies. According to the Exchange, by offering products and services on a complimentary basis and ensuring that it is offering the services most valued by its listed issuers, it improves the quality of the services that listed companies receive. Accordingly, the Commission believes that the NYSE's proposal reflects the current competitive environment for exchange listings among national securities exchanges and is appropriate and consistent with Section 6(b)(8).

Moreover, the Commission believes that it is appropriate for the Exchange to offer varying services to different categories of issuers.<sup>10</sup> According to the Exchange, Tier One Companies, because they tend to be larger, more complex organizations, would benefit most from the individualized attention offered by the advisory services element of the Enhanced Package. By comparison, the Exchange states that Tier Two and Tier A Companies tend to be mid-sized companies and therefore are smaller, less complex organizations than Tier One Companies that can benefit from the general tools offered by the Basic Package. Further, according to the Exchange most Tier B Companies are smaller and, less complex organizations than Tier Two and Tier A companies and are unlikely to require the tools offered by the Basic

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<sup>10</sup> See Securities Exchange Act Release No. 65127 (Aug. 12, 2011), 76 FR 51449 (Aug. 18, 2011) (SR-NYSE-2011-20) (“Approval Order”), finding that the existing tiers are consistent with the Act. In particular, the Approval Order states that while not all issuers receive the same level of services, NYSE has stated that trading volume and market activity are related to the level of services that the listed companies would use in the absence of complimentary arrangements. The Commission found, among other things, that “...the products and services and their commercial value are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, and the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.” See Approval Order, 76 FR at 51452.

Package.<sup>11</sup> Additionally, the Enhanced and Basic Packages are simply being offered as an additional alternative choice and are approximately equal to the commercial value of other products already being offered to listed companies in each applicable tier. Further, all listed companies will continue to receive some level of free services, including the addition of the free data room services and virtual investor relation tools being approved in this order. Finally, the Commission believes that the change will provide greater transparency under the Exchange's rules as to the actual fees, and the value of free products and services, applicable to listed companies.

Based on the factors noted above, the Commission continues to believe that the products and services and their commercial value are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, and that the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.<sup>12</sup>

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<sup>11</sup> See Notice, supra note 4.

<sup>12</sup> See also Approval Order, supra note 10.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (NYSE-2013-68) be, and it hereby is, approved.

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

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).