

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75740; File No. SR-NYSE-2015-36)

August 19, 2015

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Section 907.00 of the Listed Company Manual (the “Manual”) to (i) Amend the Suite of Complimentary Products and Services that are Offered to Certain Current and Newly Listed Companies, (ii) Update the Value of Complimentary Products and Services Offered to Listed Companies, and (iii) Provide that Complimentary Products and Services Would also be Offered to Companies that Transfer their Listing to the Exchange from Another National Securities Exchange

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 11, 2015, 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 and II 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 907.00 of the listed company manual (the “manual”) [sic] to (i) amend the suite of complimentary products and services that are offered to certain current and newly listed companies, (ii) update the value of complimentary products and services offered to listed companies, and (iii) provide that complimentary products and services would also be offered to companies that transfer

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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.

their listing to the exchange [sic] from another national securities exchange. The text of the proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 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

In December 2013, The [sic] Exchange adopted a rule to expand the suite of complimentary products and services that it offers to certain current and newly listed companies on the Exchange. Under this rule, certain companies currently listed on the Exchange ("Eligible Current Listings") are offered a suite of complimentary products and services that varies depending on the number of shares of common stock or other equity security that a company has outstanding. Similarly, the Exchange presently offers a suite of complimentary products and services to (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering, and (ii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists

new shares in the absence of a public offering), or carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering) (collectively, “Eligible New Listings”).

Based on the Exchange’s experience offering complimentary products and services to Eligible Current Listings and Eligible New Listings, the Exchange now proposes to amend Section 907.00 of the Manual to (i) amend the suite of complimentary products and services that are offered to Eligible Current Listings and Eligible New Listings, and (ii) update the value of complimentary products and services offered to such companies. The Exchange will further amend Section 907.00 of the Manual to specify that certain companies that transfer their listing of common stock or equity securities to the Exchange from another national securities exchange (“Eligible Transfer Companies”) will be eligible to receive an enhanced package of complimentary products and services that is comparable to the package offered to Eligible New Listings. Currently, companies that transfer their listing to the Exchange are offered complimentary products and services on the same terms as Eligible Current Listings.

The Exchange proposes to update the approximate commercial values of the products and services it presently offers to Eligible Current Listings and Eligible New Listings. Based on conversations with the vendors, the Exchange believes that the updated values would more accurately reflect the cost associated with providing these products and services. Accordingly, the approximate commercial value of market surveillance products and services would change from \$45,000 to \$55,000 per annum, the approximate commercial value of corporate governance tools would change from \$20,000 to \$50,000 per annum, the approximate commercial value of web-hosting

products and services would change from a range of \$12,000-16,000 to \$16,000 per annum, the approximate commercial value of market analytics products and services would change from \$20,000 to \$30,000 per annum and the approximate commercial value of news distribution products and services would change from \$10,000 to \$20,000 per annum.

The Exchange also proposes to add whistleblower hotline services (with a commercial value of approximately \$4,000 annually) to the list of services that it offers to all listed companies for a period of 24 months. The Exchange believes that having a whistleblower hotline service is an essential component of good corporate governance and providing this service to all listed companies would assist them in complying with, among other things, the requirements of the Sarbanes-Oxley Act, Foreign Corrupt Practices Act and UK Bribery Act.

The Exchange also proposes to include web-casting services (with a commercial value of approximately \$6,500 annually) as a separate category of complimentary products and services offered to certain issuers.<sup>4</sup> Web-casting services are an important tool utilized by listed companies in connection with their quarterly earnings release process. Accordingly, the Exchange believes that offering web-casts to certain issuers would assist them in engaging with their shareholders and effectively disclosing information in connection with their quarterly earnings releases.

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<sup>4</sup> The web-hosting product offered by the Exchange provides eligible issuers with a website containing business content that can be viewed by investors. Web-casting services enable companies to host interactive web-casts to communicate with investors. Eligible companies will receive four interactive web-casts each year.

The Exchange further proposes to amend Section 907.00 of the Manual to remove data room services and virtual investor relation tools as a complimentary product offered to all listed companies. Since such products were first offered by the Exchange, very few listed companies have requested to receive them. Based on this extremely low demand, therefore, the Exchange believes it is appropriate to discontinue these offerings. The Exchange proposes to replace these discontinued products by offering a whistleblower hotline for a period of 24 calendar months which, for the reasons stated above, it believes will be more useful to listed companies. In addition, all listed companies will continue to be eligible for some level of complimentary products and services via the Exchange's Market Access Center.

Currently, all listed issuers receive some complimentary products and services through NYSE Market Access Center. The Exchange also offers Eligible Current Listings a suite of products and services that varies based on the number of shares such companies have issued and outstanding. Eligible Current Listings that have more than 270 million shares issued and outstanding (each a "Tier One Eligible Current Listing") are presently offered (i) a choice of market surveillance, corporate governance tools and advisory services or market analytics products and services, and (ii) web-hosting products and services, on a complimentary basis. Eligible Current Listings that have between 160 million and 269.9 million shares issued and outstanding (each a "Tier Two Eligible Current Listing") are presently offered a choice of market analytics, corporate governance tools or web-hosting products and services. The Exchange proposes to amend Section 907.00 to delete corporate governance tools and advisory services from the suite of products offered to a Tier One Eligible Current Listing and corporate governance tools

from the suite of products offered to a Tier Two Eligible Current Listing. In both cases, the Exchange proposes to replace the deleted service with web-casting products and services. Based on conversations with Tier One and Two Eligible Current Listings, the Exchange has learned that the corporate governance services currently offered are not as helpful to these more established companies as they are to newly listed companies that are developing their corporate governance policies and procedures. Accordingly, the Exchange proposes to discontinue offering its corporate governance product to Tier One and Two Eligible Current Listings due to low demand for the service. For the reasons stated above, the Exchange believes Eligible Current Listings would find web-casting services to be more useful to them than the existing suites of corporate governance offerings.

The Exchange currently offers Eligible New Listings different products and services based on such companies' global market value. Eligible New Listings with a global market value of \$400 million or more (each a "Tier A Eligible New Listing") are presently offered (i) market surveillance products and services for a period of 12 calendar months from the date of listing or (ii) a choice of market analytics products and services or corporate governance tools for a period of 24 calendar months from the date of listing. Eligible New Listings with a global market value of less than \$400 million (each a "Tier B Eligible New Listing") are presently offered web-hosting and news distribution products and services for a period of 24 months from the date of listing. The Exchange proposes to amend Section 907.00 to provide that, in addition to the currently offered market surveillance products and services, Tier A Eligible New Listings would be offered market analytics, web-hosting, web-casting, corporate governance tools, and news

distribution products and services, in each case, for a period of 24 calendar months.

Because the Exchange will offer each of these services to Tier A Eligible New Listings for a period of 24 months, it proposes to delete text from Section 907.00 that discusses providing certain services for only 12 months as well as options for continuing such services at the end of the initial 12 month period.

The Exchange also proposes to amend Section 907.00 to provide that, in addition to the currently offered web-hosting and news distribution products and services, Tier B Eligible New Listings would be offered web-casting, market analytics and corporate governance tools, in each case, for a period of 24 calendar months.

The Exchange believes that it is appropriate to expand the suite of complimentary products and services it offers to Tier A and Tier B Eligible New Listings because such companies are listing on the Exchange for the first time and frequently have greater needs with respect to developing their corporate governance and shareholder outreach capabilities. Further, the Nasdaq Stock Market (“Nasdaq”) offers comparable complimentary products and services to newly listed companies and the Exchange believes that the proposed changes would enable the Exchange to compete for new listings.<sup>5</sup>

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<sup>5</sup> Pursuant to Nasdaq Stock Market Rule IM-5900-7, Nasdaq offers newly listed companies a complimentary package of services that includes whistleblower hotline, investor relations website, press releases, interactive web-casting, market analytics tools and, depending on a company’s size, market surveillance tools. This suite of products in this package is comparable to the suite that the Exchange proposes to offer as described herein.

The Exchange faces competition in the market for listing services. As part of this competition, the Exchange seeks to entice Nasdaq-listed companies to transfer their listing to the Exchange. Similarly, Nasdaq seeks to entice Exchange-listed companies to transfer to Nasdaq. The Exchange believes that one way Nasdaq seeks to entice Exchange-listed companies to transfer to Nasdaq is to offer such companies a suite of complimentary products and services that they do not currently receive on the Exchange.<sup>6</sup> For example, Nasdaq offers transfer companies a package of complimentary products and services on the same terms that it offers such package to new listings.<sup>7</sup> Because the Exchange believes that Nasdaq's approach may incentivize a company to transfer its listing, the Exchange proposes to amend Section 907.00 of the Manual to enhance the package of complimentary products and services offered to Eligible Transfer Companies beyond the package that transfer companies are currently eligible to receive as Eligible

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<sup>6</sup> Under this proposed rule change, the Exchange will offer Tier One Currently Listed Companies a package of complimentary products and services with a maximum value of \$77,500. Tier Two Currently Listed Companies will be offered a package of complimentary products and services with a maximum value of \$30,000 per year. By comparison, Nasdaq currently offers a suite of complimentary products and services valued at \$125,500 per year for three years to transfer companies with a market capitalization of \$750 million or more and a suite of complimentary products and services valued at \$70,500 per year for two years to transfer companies with a market capitalization less than \$750 million. Although the Exchange offers its packages to Eligible Current Listings indefinitely, it is worth noting that, due to the eligibility requirements to be deemed an Eligible Current Listing (i.e. shares issued and outstanding), approximately 60% of companies currently listed on the Exchange do not qualify for any additional complimentary products and services beyond the basic package that is offered to all listed companies. Conversely, because Nasdaq has no such minimum outstanding share requirement, any Exchange-listed company that transfers to Nasdaq is entitled, at a minimum to \$70,500 in complimentary products and services per year for a period of two years.

<sup>7</sup> See Footnote 4 [sic], *infra*, [sic] for a description of the complimentary products and services that Nasdaq offers to newly listed companies. Nasdaq offers these same packages to companies that transfer from the Exchange to Nasdaq.



Current Listings. As revised, Section 907.00 of the Manual will entitle Eligible Transfer Companies to receive a package of complimentary products and services on largely the same terms as it offers such packages to Eligible New Listings.<sup>8</sup> The one difference between the packages that the Exchange proposes to offer to Eligible Transfer Companies and Eligible New Listings is that the Exchange will not offer corporate governance tools to Eligible Transfer Companies. As described herein, in the Exchange’s experience such tools are not as useful for established companies (which all Eligible Transfer Companies would presumably be) as they are for newly listed companies.

The specific tools and services offered by the products discussed herein will be developed by the Exchange or by third-party vendors. NYSE Governance Services<sup>9</sup> will

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<sup>8</sup> Because the Exchange proposes to offer Eligible Transfer Companies a package of complimentary products and services comparable to the package that it offers to Eligible New Listings, the Exchange will utilize the same metric, *i.e.*, global market value, to determine eligibility for each designation so as to avoid confusion. Currently, transfer companies may receive complimentary products and services if they qualify to be designated as an Eligible Current Listing, such designation being based on the number of outstanding shares of a company’s equity securities. Under the proposed rule change, Eligible Transfer Companies with a global market value of \$400 million or more will be eligible to receive a suite of complimentary products and services valued at \$127,500 per year for two years and Eligible Transfer Companies with a global market value of less than \$400 million will be eligible to receive a suite of complimentary products and services valued at \$72,500 per year for two years.

<sup>9</sup> The Exchange believes that NYSE Governance Services is not a “facility” of the Exchange. 15 U.S.C. 78c(a)(2). The Act defines “facility” to include an exchange’s “premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system or communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.” NYSE Governance Services is a distinct entity that is separate from the Exchange and engages in a discrete line of business that is not “for the purpose of effecting or reporting a transaction” on an exchange. While this proposal is being filed with the Commission under

offer and develop the corporate governance tools discussed herein, but will not provide any other service discussed herein. NYSE Governance Services is an entity that is owned by the Exchange's parent company and is a leading provider of corporate governance, risk and compliance services to a diverse set of customers, including, among others, companies listed on the Exchange. 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. The Exchange notes that, 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.

The Exchange has learned that companies listing on the Exchange for the first time often require a period of time after listing to complete the contracting and training process with vendors providing the complimentary products and services. Therefore, many companies are not able to begin using the suite of products offered to them immediately on the date of listing. To address this issue, the Exchange proposes to amend Section 907.00 to specify that if an Eligible New Listing or Eligible Transfer Company begins using a particular service within 30 days after the date of listing, the complimentary period begins on such date of first use. In all other instances, the complimentary period will begin on the listing date.

Lastly, the Exchange proposes to amend Section 907.00 to change the term "newly listed issuer" to "Eligible New Listing" and give such new term the definition it is given herein. Separately, because the Exchange proposes to offer an enhanced package

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Section 19(b)(2) of the Act because it relates to services offered in connection with a listing on the Exchange, the Exchange does not believe it is required to file NYSE Governance Services' price schedule or changes that do not relate to services offered in connection with a listing on the Exchange.

of complimentary products and services to Eligible Transfer Companies (as opposed to the more limited package that transfer companies currently receive if they qualify as an Eligible Current Listing), the Exchange proposes to amend Section 907.00 to include a definition for such category of listed companies. Throughout the entirety of Section 907.00 of the Manual, the Exchange proposes to change the term “currently listed issuers” to “Eligible Current Listings.”<sup>10</sup> As transfer companies will no longer be treated on the same terms as Eligible Current Listings, but will instead receive complimentary products and services as a separate category of issuer under the proposed rule, the Exchange does not believe there could be any inference that a transfer company is included in the definition of Eligible New Listing. Therefore, the Exchange proposes to delete obsolete text to this effect from Section 907.00.

The Exchange also proposes to amend the first paragraph of Section 907.00 of the Manual to specify that it will offer certain complimentary products and services and access to discounted third-party products and services through the NYSE Market Access Center to both currently and newly listed issuers, whereas previously it stated such services were only offered to currently listed issuers.

The Exchange will implement the proposed rule upon approval. Any Eligible New Listing that listed on the Exchange prior to approval of the proposed rule will continue to receive services under the terms of the current rule. Therefore, for as long as any Eligible New Listing is receiving services under the terms of Section 907.00 of the

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<sup>10</sup> As described above in the definition of “Eligible Current Listing,” in order to qualify for such designation, a company must have equity securities listed on the Exchange.

Manual as currently in effect, the Exchange will maintain a link<sup>11</sup> to such section in the Introductory Note to Section 907.00.

With respect to Eligible Current Listings, such companies will be offered web-casting and whistleblower services as described herein from the date of approval. Further, as discussed above, the Exchange proposes to discontinue offering complimentary corporate governance services to Eligible Current Listings due to a low demand for that product. Notwithstanding the approval of the proposed rule change, however, to the extent that the Exchange has already paid a third-party provider (prior to approval) for corporate governance services to an Eligible Current Listing, such complimentary service will continue until the payments run out. Once any pre-approval payments run out, such services will be discontinued. The Exchange expects all corporate governance services to Eligible Current Listings to be completely discontinued no later than early 2016.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4)<sup>13</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with

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<sup>11</sup> <https://www.nyse.com/get-started/reference>

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

Section 6(b)(5)<sup>14</sup> of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to offer complimentary products and services to attract new listings, retain currently listed issuers, and respond to competitive pressures. The Exchange 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. By offering products and services on a complimentary basis and ensuring that it is offering the services most valued by its listed issuers, the Exchange will improve the quality of the services that listed companies receive.

The Exchange believes it is appropriate to expand the suite of complimentary products and services offered to Tier A and Tier B Eligible New Listings and to offer such complimentary products and services to Tier A and Tier B Eligible Transfer Companies because such services will ease the transition of companies that are becoming public for the first time or transferring their listing to a new exchange. Further, Nasdaq offers a comparable suite of complimentary products and services to new listings and transfers and the proposed rule change will enable the Exchange to more effectively compete for listings.

The Exchange believes it is appropriate to remove corporate governance services from the list of complimentary products and services that it offers to Tier One and Tier Two Eligible Current Listings and to not offer such services to Eligible Transfer Companies because, as described herein, such services are less beneficial to established

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<sup>14</sup> 15 U.S.C. 78f(b)(5).

companies than they are to Eligible New Listings. Further, very few Tier One and Tier Two Eligible Current Listings presently seek to receive such services.

The Exchange believes that its proposal to enhance the package of complimentary products and services that it offers to Eligible Transfer Companies from the suite such companies are currently offered as Eligible Current Listings is consistent with Sections 6(b)(8)<sup>15</sup> of the Act in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described above, the Exchange competes with Nasdaq for listings. Currently, Nasdaq offers the same suite of complimentary products and services to new listings as it does to listings that transfer to its market. The Exchange believes, therefore, that its proposal to more closely align<sup>16</sup> the suite of complimentary products and services that it offers Eligible New Listings and Eligible Transfer Companies will enhance its ability to compete with Nasdaq by enabling it to offer transfers from Nasdaq a similar package to that currently offered to Exchange companies by Nasdaq.

With respect to the addition of web-casting as a product offered to each tier of Eligible Current Listings, Eligible New Listings and Eligible Transfer Companies, the Exchange believes that it is reasonable to offer this product because listed companies have indicated to the Exchange that such web-casting products would be beneficial to their shareholder outreach initiatives.

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

<sup>16</sup> As discussed above, the package of complimentary products and services offered to Eligible New Listings and Eligible Transfer Companies will be identical except that Eligible Transfer Companies will not be offered corporate governance tools.

Lastly, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to offer complimentary whistleblower services to all companies listed on the Exchange in lieu of data room services and virtual investor relation tools for which there was very little demand. Companies are not forced or required to utilize the complimentary products and services as a condition of listing. All companies will continue to receive some level of free services.

Allowing companies up to 30 days after their listing to start using the complimentary products and services is a reflection of the Exchange's experience that it can take companies a period of time to review and complete necessary contracts and training for services following their listing. Allowing this modest 30 day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thus giving companies the full intended benefit.

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 change amends the suite of products and services offered to certain listed companies. The proposed rule change also allows for an enhanced package of complimentary products and services to be offered to Eligible Transfer Companies as opposed to the package they are currently offered as Eligible Current Listings. All similarly situated companies are eligible for the same package of services. Further, the Exchange notes that Nasdaq already offers a similar suite of complimentary products and services to companies initially listing or transferring their listing to its market. Therefore,

the proposed changes to Section 907.00 of the Manual will increase competition by enabling the Exchange to more effectively compete for listings.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove 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-2015-36 on the subject line.



Paper comments:

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

All submissions should refer to File Number SR-NYSE-2015-36. 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 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 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 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-2015-36, 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.<sup>17</sup>

Jill M. Peterson  
Assistant Secretary

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