

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75057; File No. SR-NYSE-2015-25)

May 28, 2015

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 804.00 of the Listed Company Manual to Specify that Issuers Seeking a Review of a Delisting Decision Made by the Staff of NYSE Regulation, Inc. Must Have Paid All Prior Fees Owed to the Exchange

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> notice is hereby given that on May 13, 2015, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 804.00 of the Listed Company Manual (the “Manual”) to specify that issuers seeking a review of a delisting decision made by the staff of NYSE Regulation, Inc. (“NYSE Regulation”) must have paid all prior fees owed to the Exchange before the Exchange will accept payment of the applicable appeal fee.

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.

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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.

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

The Exchange proposes to amend Section 804.00 of the Manual to specify that issuers seeking a review of a delisting decision made by the staff of NYSE Regulation must have paid all prior fees owed to the Exchange before the Exchange will accept payment of the applicable appeal fee.

Companies listed on the Exchange are subject to certain fees throughout the life of their listing, including annual fees for each class or series of security listed on the Exchange as well as fees associated with initial and supplemental listing applications. Although all fees are due immediately when billed, on some limited occasions listed companies fail to remit payment for fees due to the Exchange. If payment is not received when due, the Exchange has procedures in place to collect on outstanding bills. In the event that a listed company repeatedly fails to pay fees due to the Exchange, it can be subject to delisting.

NYSE Regulation monitors listed companies for compliance with Exchange rules and can initiate delisting proceedings in the event of non-compliance. Listed companies that are subject to a delisting determination by the staff of NYSE Regulation have the right to appeal

staff's determination to the Committee for Review (the "Committee") of the Board of Directors of NYSE Regulation. Currently, companies that would like to undertake such appeal must pay a \$20,000 nonrefundable appeal fee.

In the Exchange's experience, listed companies that are non-compliant with Exchange rules—and thus subject to delisting—frequently also struggle financially and may be unable to pay their vendors or service providers. It is possible, therefore, that a company subject to delisting for failure to comply with Exchange rules may also be delinquent in the payment of fees due to the Exchange. Should NYSE Regulation commence delisting proceedings against such company, the Exchange believes it is fair to require that the company first pay all past-due fees before it can submit the applicable appeal fee and request a review of staff's delisting decision.

When a company appeals a delisting determination to the Committee, the staff of NYSE Regulation invests a significant amount of time and effort preparing appeal briefs and other related documentation. Before the staff of NYSE Regulation expends these additional resources, it believes it is appropriate to require that companies seeking an appeal have paid the Exchange in full for all services already provided. The Exchange proposes to amend Section 804.00 of the Manual to make this requirement explicit. The proposed requirement is consistent with the rules of the NYSE MKT which has a comparable rule.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4)<sup>6</sup> of the Act, in particular, in

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<sup>4</sup> See Section 1203(a) of the NYSE MKT Company Guide.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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 Section 6(b)(5)<sup>7</sup> of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(7)<sup>8</sup> of the Act because listed companies will still have adequate due process rights to appeal any delisting action.

The Exchange believes that it is reasonable to require that a company seeking to appeal a delisting determination made by NYSE Regulation first pay all past due fees owed to the Exchange. All companies listed on the Exchange are subject to annual and other fees. The Exchange believes that its proposal is reasonable because it is consistent with the Exchange's goal of ensuring that all issuers pay for the benefit of having their securities listed on the Exchange as well as other regulatory benefits received from the Exchange and therefore ensures that fees are equitably allocated among listed companies. The proposed rule change is not designed to permit unfair discrimination because all listed companies seeking to appeal a delisting decision will be subject to the provisions of Section 804.00 of the Manual and each company will be required to pay only the amount it has incurred under the Exchange's fee rules as generally applied to all listed companies.

**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 simply requires that listed companies first pay all past due fees owed to the

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(7).

Exchange before they can request an appeal of a delisting determination. Such requirement ensures that all listed companies pay for the benefit of having their securities listed on the Exchange. Accordingly, the Exchange does not believe that the proposed change will impose any burden on 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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-2015-25 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-2015-25. 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, DC 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-2015-25 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>12</sup>

Robert W. Errett  
Deputy Secretary

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<sup>12</sup> 17 CFR 200.30–3(a)(12).