

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77850; File No. SR-NYSE-2016-22)

May 17, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 5 to Proposed Rule Change Adopting Initial and Continued Listing Standards for the Listing of Equity Investment Tracking Stocks and Adopting Listing Fees Specific to Equity Investment Tracking Stocks

I. Introduction

On April 7, 2016, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt initial and continued listing standards for the listing of Equity Investment Tracking Stocks and to adopt fees for Equity Investment Tracking Stocks. The proposed rule change was published for comment in the Federal Register on April 27, 2016.³ On April 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the original filing in its entirety. On May 17, 2016, the Exchange filed Amendment No. 5 to the proposal, which superseded the filing, as amended by Amendment No. 1.⁴ Amendment No. 5 is described in Item II below. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 5, from interested persons.

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77674 (April 21, 2016), 81 FR 24919 (April 27, 2016).

⁴ On May 13, 2016, the Exchange submitted and withdrew Amendment No. 2 to the proposed rule change. On May 13, 2016, the Exchange filed Amendment No. 3 to the proposed rule change, and on May 16, 2016 the Exchange withdrew Amendment No. 3 to the proposed rule change. On May 16, 2016 the Exchange submitted Amendment No. 4 to the proposal, and on May 17, 2016, the Exchange withdrew Amendment No. 4 to the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 5

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 III 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 initial and continued listing standards for the listing of Equity Investment Tracking Stocks. The Exchange also proposes to adopt listing fees specific to Equity Investment Tracking Stocks that are the sole listed common equity security of the issuer.

For purposes of proposed new Section 102.07 of the Manual, an Equity Investment Tracking Stock is defined as a class of common equity securities that tracks on an unleveraged basis the performance of an investment by the issuer in the common equity securities of a single other company listed on the Exchange. An Equity Investment Tracking Stock may track multiple classes of common equity securities of a single issuer, so long as all of those classes have identical economic rights and at least one of those classes is listed on the Exchange.

In order to qualify for initial listing under proposed Section 102.07, an Equity Investment Tracking Stock will be required to meet the distribution and public float requirements currently applicable for initial public offerings set forth in Sections 102.01A and 102.01B of the Manual, respectively, and the Global Market Capitalization set forth in Section 102.01C. As such, as required under Section 102.01A, an Equity Investment Tracking Stock, at the time of initial listing, will be required to have at least 400 holders of 100 shares or more and 1,100,000 public

[sic] held shares available for trading. Further, as required under Section 102.01B, an Equity Investment Tracking Stock must have an aggregated [sic] market value of publicly-held shares of \$40,000,000 and a per share price of \$4 at the time of initial listing. Under Section 102.01C, the issuer of an Equity Investment Tracking Stock will be required to meet the Global Market Capitalization Test, under which the issuer must have \$200 million in global market capitalization at the time of initial listing. The issuer of the Equity Investment Tracking Stock must also own (directly or indirectly⁵) at least 50% of both the economic interest and voting power of all of the outstanding classes of common equity of the issuer whose equity is tracked by the Equity Investment Tracking Stock. The Issuer of Equity Investment Tracking Stock must also fully comply with the Exchange's corporate governance requirements set forth in Section 303A of the Manual, subject to applicable exemptions such as those applicable to controlled companies.

The Exchange will not list an Equity Investment Tracking Stock if, at the time of the proposed listing, the issuer of the equity tracked by the Equity Investment Tracking Stock has been deemed below compliance with listing standards by the Exchange.

The Exchange proposes to subject the issuer of an Equity Investment Tracking Stock to the same continued listing standards under Sections 802.01A and 802.01B as are applicable to other companies listing common stocks on the Exchange. As such, these companies will be considered to be below compliance with Section 802.01A if (i) their number of total stockholders is less than 400 or (ii) their number of total stockholders is less than 1,200 and their average

⁵ An example of an indirect ownership would be where the listed company has a 100%-owned subsidiary and that subsidiary in turn owns the stock of the company whose performance is being tracked. Another example would be where the listed company owns 100% of each of two subsidiaries, each of which owns stock in the company whose performance is being tracked.

monthly trading volume is less than 100,000 shares (for the most recent 12 months) or (iii) their number of publicly-held shares is less than 600,000. Such companies will be deemed to be below compliance with Section 802.01B if their average global market capitalization over a consecutive 30 trading-day period is less than \$50,000,000 and, at the same time stockholders' equity is less than \$50,000,000 and (will be subject to immediate delisting if they are determined to have average global market capitalization over a consecutive 30 trading-day period of less than \$15,000,000).

In the case of an Equity Investment Tracking Stock, the Exchange will review the continued listing status of that security if:

- The underlying listed equity security or securities whose value is tracked by the Equity Investment Tracking Stock ceases or cease to be listed on the Exchange.
- The issuer of the Equity Investment Tracking Stock owns (directly or indirectly) less than 50% of either the economic interest or the voting power of all of the outstanding classes of common equity of the issuer whose equity is tracked by the Equity Investment Tracking Stock.
- The Equity Investment Tracking Stock ceases to track the performance of the listed equity security or securities that was tracked at the time of initial listing.

In the event that any of the foregoing conditions exist [sic], the Exchange will determine whether the Equity Investment Tracking Stock meets any other applicable initial listing standard in place at that time. If the Equity Investment Tracking Stock does not qualify for initial listing at that time under another applicable listing standard the issuer will not be eligible to follow the

procedures set forth in Sections 802.02 and 802.03 and the Exchange will immediately suspend the Equity Investment Tracking Stock and commence delisting proceedings. Furthermore, whenever trading in the equity security whose value is tracked by an Equity Investment Tracking Stock is suspended or delisting proceedings are commenced with respect to such security, such Equity Investment Tracking Stock will be suspended and/or delisting proceedings commenced with respect to such Equity Investment Tracking Stock at the same time.

The Exchange proposes to amend Section 202.06(B) of the Manual to provide that, in the event that the issuer of the common equity security tracked by an Equity Investment Tracking Stock intends to issue a material news release during the trading day and the staff of NYSE Regulation determines that a regulatory trading halt required by Section 202.06 should be implemented pending dissemination of the news or any other required regulatory trading halt should be implemented, the Exchange will also halt trading in the Equity Investment Tracking Stock simultaneously with the halt in the underlying security and will also recommence trading at the same time.

The Exchange represents that it will monitor activity in Equity Investment Tracking Stocks to identify and deter any potential improper trading activity in such securities. The Exchange will adopt enhanced surveillance procedures to enable it to monitor Equity Investment Tracking Stocks alongside the securities whose value they track. Additionally, the Exchange represents that its surveillance procedures are generally adequate to properly monitor the trading of Equity Investment Tracking Stocks. Specifically, the Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of

Exchange rules and applicable federal securities laws.⁶

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

Given the novel investment characteristics of Equity Investment Tracking Stocks, the Exchange will conduct a review of the trading and compliance with continued listing standards of Equity Investment Tracking Stocks and their issuers over the initial two year period for which the proposed listing standard is in operation. The Exchange will furnish two reports to the SEC based on this review, one to be provided one year after the initial listing date of the first security listed under the proposed standard and the second to be provided on the second anniversary of such initial listing. At a minimum, the reports will address the relationship between the trading prices of listed Equity Investment Tracking Stocks and those of the securities whose values they track, the liquidity of the market for the two securities, and any manipulation concerns arising in connection with the trading of securities listed under the standard and the securities whose values are being tracked. The reports will also discuss any recommendations the Exchange may have for enhancements to the listing standard based on its review.

The proposed rule will provide that, prior to the commencement of trading of any Equity Investment Tracking Stock, the Exchange will distribute an Information Memorandum to its Members and Member Organizations that includes (a) any special characteristics and risks of

⁶ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

trading the Equity Investment Tracking Stock, and (b) the Exchange Rules that will apply to the Equity Investment Tracking Stock including Exchange Rules that require Member

Organizations:

- to use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.
- in recommending transactions in the Equity Investment Tracking Stock to have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such Member Organization, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Equity Investment Tracking Stock.

The Exchange proposes to amend Sections 902.02 and 902.03 of the Manual to provide that, where an Equity Investment Tracking Stock is the only common equity security of the issuer listed on the Exchange, listing and annual fees for such security will be subject to a single fee cap at the time of original listing and on an annual basis. The Exchange further proposes to amend Section 907.00 of the Manual to limit the products and services provided to the issuer of an Equity Investment Tracking Stock for so long as it is the only common equity security of the issuer listed on the Exchange.

Pursuant to Sections 902.02 and 902.03 of the Manual, listed companies are charged an annual fee for each class or series of security listed on the Exchange. The annual fee is

calculated based on the number of shares issued and outstanding and is currently set at a rate of \$0.001025 for the primary listed class of equity, subject to an annual minimum of \$52,500. In its first year of listing, a company's annual fee is prorated from the date of initial listing through the year end. Listed companies also pay other fees to the Exchange, including fees associated with initial and supplemental listing applications. In any given calendar year, however, Section 902.02 of the Manual specifies that the total fees that the Exchange may bill a listed company are capped at \$500,000 (the "Total Maximum Fee"). For an Equity Investment Tracking Stock that is the issuer's only common equity security listed on the Exchange, the Exchange proposes to adopt a Total Maximum Fee of \$200,000.

Section 902.03 of the Manual currently provides, in part, for listing fees the first time an issuer lists a class of common shares, charged on a per share basis based on tiers set forth in the rule. The first time that an issuer lists a class of common shares, the issuer is also subject to a one-time special charge of \$50,000. Once listed, if an issuer lists additional shares of a class of previously listed securities, the issuer is subject to listing fees for such additional shares. The minimum and maximum listing fees applicable the first time an issuer lists a class of common shares are \$125,000 and \$250,000, respectively, which amounts include the special charge of \$50,000. In lieu of the foregoing, the Exchange proposes to establish for an Equity Investment Tracking Stock that is its issuer's only common equity security listed on the Exchange a fixed initial listing fee (inclusive of the one-time charge) of \$100,000. Subject to the Total Maximum Fee of \$200,000 per year described above, the Exchange proposes to charge the same per share annual fee for Equity Investment Tracking Stocks as for the primary class of equity of a listed operating company (i.e., currently \$0.001025 per share, subject to the minimum annual fee of \$52,500).

Finally, Section 907.00 of the Manual sets forth certain complimentary products and services that are offered to certain currently and newly listed issuers. These products and services are developed or delivered by NYSE or by a third party for use by NYSE-listed companies. Some of these products are commercially available from such third-party vendors. All listed issuers receive some complimentary products and services through the NYSE Market Access Center. The Exchange proposes to exclude issuers of an Equity Investment Tracking Stock that is the issuer's only common equity security listed on the Exchange from receiving the products and services provided for under Section 907.00, with the exception that such issuers will receive the complimentary products and services and access to discounted third-party products and services through the NYSE Market Access Center available to all listed issuers. Issuers of Equity Investment Tracking Stocks will be eligible for tier-based services commencing when they have an additional class of common equity securities listed. In determining eligibility for the various service tiers under Section 907.00, the Exchange will aggregate all of the outstanding shares of listed classes of common equity securities of a company, including all outstanding shares of any listed Equity Investment Tracking Stock that is not the issuer's only listed class of common equity securities.

The Exchange proposes to limit the fees that would be payable for the listing on an Equity Investment Tracking Stock as an incentive for the issuer to list such security on the Exchange. As described below, the Exchange proposes to make the aforementioned fee changes to better reflect the Exchange's costs related to listing Equity Investment Tracking Stocks and the corresponding value of such listing to issuers.

The Exchange proposes to make three other minor changes in this filing: (i) to remove from Section 902.03 references to the annual fee schedule applicable to years prior to 2016; (ii)

to update the web link included in Section 907.00 and (iii) to delete the word “four” from Section 802.01B, as there are no longer four continued listing standards referred to in that rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4)⁸ and 6(b)(5)⁹ of the Act, in particular.

The Exchange believes that the proposed initial and continued listing standards for Equity Investment Tracking Stocks further the objectives of Section 6(b)(5) of the Act,¹⁰ in particular in that they are 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 [sic] not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed listing standards are designed to protect investors and the public interest by ensuring that Equity Investment Tracking Stocks listed on the Exchange meet stringent quantitative and qualitative listing standards to qualify for initial and continued listing. The Exchange notes that an Equity Investment Tracking Stock will be subject to delisting if they [sic] do [sic] not meet another applicable initial listing standard and (i) the underlying equity security whose value is tracked by the Equity Investment Tracking Stock ceases to be listed on

⁷ 15 U.S.C. 78f (b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(5).

the Exchange; (ii) the issuer of the Equity Investment Tracking Stock owns (directly or indirectly) less than 50% of either the economic interest or the voting power of all of the outstanding classes of common equity of the issuer whose equity is tracked by the Equity Investment Tracking Stock; or (iii) the Equity Investment Tracking Stock ceases to track the performance of the listed equity security that was tracked at the time of initial listing. The Issuer of Equity Investment Tracking Stock must also fully comply with the Exchange's corporate governance requirements set forth in Section 303A of the Manual, subject to applicable exemptions such as those applicable to controlled companies.

The Exchange notes that it is proposing to amend Section 202.06(B) to provide that, in the event that the issuer of the common equity security tracked by an Equity Investment Tracking Stock intends to issue a material news release during the trading day and the staff of NYSE Regulation determines that a regulatory trading halt pursuant to Section 202.06 should be implemented pending dissemination of the news or if the staff of NYSE Regulation determine [sic] that any other required regulatory trading halt should be implemented, the Exchange will also halt trading in the Equity Investment Tracking Stock simultaneously with the halt in the underlying security and will also recommence trading at the same time. The Exchange believes that this proposed amendment will protect investors and the public interest by preventing market participants from gaining an advantage in trading in an Equity Investment Tracking Stock based on their possession of material nonpublic information with respect to the company whose value is being tracked by the Equity Investment Tracking Stock.

The proposed rule requires the issuer of an Equity Investment Tracking Stock to meet the Global Market Capitalization Test in Section 102.01C of the Manual at the time of initial listing and does not allow applicants the alternative of meeting the Earnings Test, as would normally be

available to an operating company applicant. The Exchange does not believe this is unfairly discriminatory, as many applicants will likely not have prepared standalone financial statements applicable to the equity investment being tracked and would therefore be unable to demonstrate compliance with the Earnings Test.

The proposed fee provisions further the objectives of Sections 6(b)(4) in that they are 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 believes that the proposed fee provisions are consistent with Section 6(b)(5) of the Act in that they do not unfairly discriminate among listed companies because there is a reasonable justification for charging the issuer of an Equity Investment Tracking Stock different fees from those charged to other issuers as there are cost and regulatory efficiencies for the Exchange when the issuer of an Equity Investment Tracking Stock and the issuer of the underlying equity security are both listed on the Exchange. Under the Exchange's proposal, the issuer of an Equity Investment Tracking Stock that is the issuer's only common equity security listed on the Exchange would pay a fixed initial listing fee of \$100,000, which is less than the minimum fee charged in connection with the listing of the primary class of equity of an operating company. In addition, Equity Investment Tracking Stocks would be billed annual fees at the same rate per share as the primary class of equity of an operating company, but, so long as the Equity Investment Tracking Stock is the issuer's only common equity security listed on the exchange, they [sic] will be subject to a lower annual fee cap that may cause an issuer of an Equity Investment Tracking Stock to be subject to a lower effective fee rate per share than if it were a regular operating company. Given the unique nature of an Equity Investment Tracking Stock, including especially the fact that its trading price will likely be primarily derivative of the trading price of the security of another company, most

of the services provided by the Exchange under Section 907.00 would be of limited value and appeal to issuers of Equity Investment Tracking Stocks and the Exchange believes it is appropriate to exclude the issuers of Equity Investment Tracking Stocks from its services program. The Exchange believes that the fact that it will not provide these costly services makes it appropriate to charge lower fees. In addition, the Exchange believes there will be regulatory efficiencies when the same regulatory staff is responsible for oversight of an Equity Investment Tracking Stock and the underlying equity security. This would include, for example, the fact that news that is material to the issuer of the underlying security would also be material to an investment in the Equity Investment Tracking Stock.

The Exchange does not expect many issuers will seek to list an Equity Investment Tracking Stock. Accordingly, the Exchange does not anticipate that it will experience any meaningful diminution in revenue as a result of the proposed lower fees and therefore does not believe that the proposed fees would in any way negatively affect its ability to continue to adequately fund its regulatory program or the services the Exchange provides to issuers

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 provide listing standards for Equity Investment Tracking Stocks that are appropriately protective of investors and is not designed to limit the ability of the issuers of those securities to list them on any other national securities exchange. 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 listing standards and fee changes impose a 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 5 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. Please include File Number SR-NYSE-2016-22 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-2016-22. 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-2016-22, 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

Robert W. Errett
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).