

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90466; File No. SR-NYSE-2020-94)

November 20, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Section 907.00 of the Manual to Extend the Period of Time for the Entitlement of Certain Eligible Issuers to Receive Complimentary Products and Services Under that Rule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 6, 2020, 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, 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 amend Section 907.00 of the Manual to modify the entitlement of eligible issuers to complimentary products and services under that rule. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Section 907.00 of the Manual sets forth complimentary products and services that issuers are entitled to receive in connection with their NYSE listing. The Exchange offers certain complimentary products and services and access to discounted third-party products and services through the NYSE Market Access Center to currently and newly listed issuers. The Exchange also provides complimentary market surveillance products and services (with a commercial value of approximately \$55,000 annually), Web-hosting products and services (with a commercial value of approximately \$16,000 annually), web-casting services (with a commercial value of approximately \$6,500 annually), market analytics products and services (with a commercial value of approximately \$30,000 annually), and news distribution products and

services (with a commercial value of approximately \$20,000 annually) to Eligible New Listings⁴ and Eligible Transfer Companies⁵ based on the following tiers:⁶

Tier A: For Eligible New Listings and Eligible Transfer Companies with a global market value of \$400 million or more, in each case calculated as of the date of listing on the Exchange, the Exchange offers market surveillance, market analytics, web-hosting, webcasting, and news distribution products and services for a period of 24 calendar months.

Tier B: For Eligible New Listings and Eligible Transfer Companies with a global market value of less than \$400 million, in each case calculated as of the date of listing on the Exchange, the Exchange offers Web-hosting, market analytics, web-casting, and news distribution products and services for a period of 24 calendar months.

⁴ For the purposes of Section 907.00, the term "Eligible New Listing" means (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), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).

⁵ For purposes of Section 907.00, the term "Eligible Transfer Company" means any U.S. or non-U.S. company that transfers its listing of common stock or equity securities, respectively, to the Exchange from another national securities exchange. For purposes of Section 907.00, an "equity security" means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depositary Receipts, or Global Depositary Receipts.

⁶ Section 907.00 provides for separate service entitlements for Acquisition Companies listed under Section 102.06 and the issuers of Equity Investment Tracking Stocks listed under Section 102.07.

Currently, the Exchange provides all of the additional complimentary products and services to Eligible New Listings and Eligible Transfer Companies for a period of 24 months. The Exchange now proposes to extend this period for the additional services provided to Eligible New Listings and Eligible Transfer Companies from 24 months to 48 months.⁷ The proposed amendment would be applicable to Eligible New Listings and Eligible Transfer Companies that list on or after the date of SEC approval of the proposal. The Exchange believes that this amendment would assist it in the competition for new listings, as well as in attracting transfers of issuers from other exchanges. The market for new listings and for the retention and transfer of listed companies is intensely competitive and the provision of attractive service offerings is a significant aspect of that competition. The Exchange notes that the Nasdaq Stock Market, Inc. (“Nasdaq”) already provides four years of complimentary services to companies transferring from the NYSE to Nasdaq Global Market that have a market capitalization of at least \$750 million, while providing two years of services to other newly listed companies.⁸

The specific tools and services offered to Eligible New Listings and Eligible Transfer Companies as part of the complimentary offering limited to those categories of issuers under Section 907.00 are provided solely by third-party vendors. Issuers are not forced or required as a condition of listing to utilize the complimentary products and services available to them pursuant to Section 907.00 and some issuers have selected competing products and services. In deciding which complimentary products and services to provide, the NYSE considers the quality of competing products and services and the needs of its listed issuers in selecting the vendors. The

⁷ Eligible New Listings and Eligible Transfer Companies will continue to be entitled to complimentary whistleblower services for 24 months, as is the case with all eligible listed companies.

⁸ See Nasdaq Marketplace Rules IM-5900-7.

NYSE may change vendors from time to time based on this ongoing review of the products and services provided by current vendors and its willingness to change vendors is consistent with competition for vendor services. The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, NYSE notes that it may choose to use multiple vendors for the same type of product or service. The NYSE notes that, from time to time, issuers elect to purchase products and services from other vendors at their own expense instead of accepting the products and services described above offered by the Exchange

The Exchange also proposes to delete two separate passages of rule text that no longer have any substantive effect as they relate to entitlements that have ceased to be relevant as the periods of time for which they existed have ended.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”) generally.⁹ Section 6(b)(4)¹⁰ requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange. Section 6(b)(5)¹¹ requires, among other things, that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers. Section 6(b)(8)¹² prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(8).

The NYSE faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The Exchange believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. Notably, Nasdaq currently provides four years of complimentary services to NYSE companies with a market capitalization of at least \$750 million transferring to Nasdaq Global Market.

The Exchange does not believe that the proposal to extend the period for which it provides certain complimentary products and services to Eligible New Listings and Eligible Transfer Companies harms the market for the complimentary products and services in a way that constitutes a burden on competition or an inequitable allocation of fees, or fails to promote just and equitable principles of trade, in a manner inconsistent with the Act. The specific tools and services offered to Eligible New Listings and Eligible Transfer Companies as part of the complimentary offering limited to those categories of issuers under Section 907.00 are provided solely by third-party vendors. As noted above, issuers are not required to utilize the complimentary products and services and some issuers have selected competing products and services. The NYSE believes that its consideration of quality and the needs of its listed issuers in selecting the vendors and its willingness to change vendors is consistent with competition for vendor services. In this regard, the NYSE notes that it may choose to use multiple vendors for the same type of product or service. The NYSE notes that, from time to time, issuers elect to purchase products and services from other vendors at their own expense instead of accepting the products and services described above offered by the Exchange.

Further, the NYSE believes that it is appropriate to offer complimentary products and services for a longer period to Eligible New Listings and Eligible Transfer Companies that list after approval of this proposal than the period for which such products and services are provided

to companies already listed on the NYSE. The purpose of the proposal is to attract future new listings and transfers and that this competitive purpose would not be served by providing the complimentary products and services for an extended period to companies that are already listed. In addition, the Exchange expects that companies that consider listing on the NYSE after the proposal is approved will take the enhanced offering into account when budgeting for their needs that are met by the complimentary products and services, while existing listed companies will have undertaken their financial planning on the basis of the current services offering and will not in any way be harmed by the proposed change. Based on the above, the Exchange believes that, upon approval of this proposal, the complimentary products and services will be equitably allocated among issuers as required by Section 6(b)(4) of the Act and the proposal does not unfairly discriminate among issuers as required by Section 6(b)(5) of the Act.

The non-substantive changes to eliminate non-applicable history from the rule text will improve the rule's readability and thereby remove an impediment to a free and open market and a national market system and help to better protect investors.

Finally, the Exchange also believes it is reasonable to balance its need to remain competitive with other listing venues, while at the same time ensuring adequate revenue to meet its regulatory responsibilities. The Exchange notes that no other company will be required to pay higher fees as a result of this proposal and it represents that providing the proposed services will have no impact on the resources available for its regulatory programs.

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 not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange faces competition in the market for listing services, and competes, in part,

by offering valuable services to companies. The proposed rule change reflects that competition, but it does not impose any burden on the competition with other exchanges. Rather, the Exchange believes the proposed changes will enhance competition for listings, as it will increase the competition for new listings and the listing of companies that are currently listed on other exchanges. Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, the Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

In addition, the Exchange does not believe that the proposal to extend the period for which it provides certain complimentary products and services to Eligible New Listings and Eligible Transfer Companies will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the NYSE notes that the specific tools and services offered to Eligible New Listings and Eligible Transfer Companies as part of the complimentary offering limited to those categories of issuers under Section 907.00 are provided solely by third-party vendors. In addition, the NYSE may choose to use multiple vendors for the same type of product or service. The NYSE also notes that currently listed and newly listed companies would not be required to accept the offered products and services from the NYSE, and an issuer's receipt of an NYSE listing is not conditioned on the issuer's acceptance of such products and services. In addition, the NYSE notes that, from time to time, issuers elect to purchase products and services from other vendors at their own expense instead of accepting the products and services described above offered by the Exchange.

Moreover, the number of companies eligible for the complimentary products and services for a longer period of time (i.e., companies newly listing on the NYSE) will be very small in

comparison to the total number of companies that comprise the target market for the services (i.e., all public companies), so that there can be no competitively meaningful foreclosure of similar services offered by third parties if the proposed rule is approved.

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 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 the 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. Please include File Number SR-NYSE-2020-94 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-2020-94. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2020-94 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).