

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93767; File No. SR-NYSE-2021-52)

December 14, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.03 of the NYSE Listed Company Manual to Modify Listing and Annual Fees Applicable to Certain Warrants Listed by Foreign Companies

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 1, 2021, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“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 902.03 of the NYSE Listed Company Manual (the “Manual”) to modify the listing fees applicable to warrants listed by foreign companies whose listed ADRs represent multiple shares or a fraction of a share. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Section 902.03 of the Manual sets forth initial listing fees and annual fees applicable to listed warrants. Initial listing fees for warrants are charged on a per warrant basis.

In many cases, foreign issuers list their equity securities on the Exchange in the form of American Depository Receipts (“ADRs”). In some instances, a listed ADR will represent a single underlying common share, but in other cases the listed ADR will represent multiple underlying common shares or a fraction of an underlying common share.

To the extent a company with listed ADRs representing multiple underlying common shares or a fraction of an underlying common share seeks to list warrants to purchase common shares, this transaction could result in a numerical discrepancy between the number of warrants issued and the number of ADRs that could be created if those warrants were fully exercised. For example: A company’s listed ADRs each represent five underlying common shares. The company issues and lists five million warrants, each exercisable for a single share. If the warrants are fully exercised, this will result in the issuance of five million shares. If those shares are all converted into the listed ADRs, the five million shares issued would result in the creation of one million ADRs.

A discrepancy between the number of warrants issued and the number of ADRs post-conversion results in a very different billing outcome than would be the case for a company that

lists its common shares directly or lists ADRs each of which represents a single underlying common share. In those cases, a listed company seeking to issue warrants exercisable into one million units of its listed equity security would issue one million warrants, rather than the five million warrants issued in the example set forth above, and would therefore pay only one-fifth of the initial listing and annual fees for the warrant listing as compared to the company whose ADRs represent five underlying common shares.

The Exchange proposes to amend Section 902.03 to charge annual and listing fees for warrants listed on ADRs on an ADR-equivalent basis. Specifically:

- *Listing Fees for Warrants Relating to Listed ADRs.* If a listed company's primary listed security is an ADR and it lists warrants that are exercisable into the equity security underlying such ADRs, it will be charged initial listing fees for the warrants adjusted to reflect the maximum number of ADRs that could be created upon exercise of such warrants.

Example A: An issuer whose primary listed security is an ADR representing five shares of its common stock lists five million warrants, each exercisable into a single share of the common stock. The issuer will be billed for listing fees for one million warrants (i.e., adjusted to reflect the number of ADRs that could be created with five million shares).

Example B: An issuer whose primary listed security is an ADR representing one-fifth of a share of its common stock lists one million warrants, each exercisable into one share of the common stock. The issuer will be billed for initial listing

and annual fees for five million warrants (i.e., adjusted to reflect the number of ADRs that could be created with one million shares).⁴

- *Annual Fees for Warrants Relating to Listed ADRs.* If a listed company's primary listed security is an ADR and it lists warrants that are exercisable into the equity security underlying such ADRs, it will be charged annual fees for the outstanding warrants adjusted to reflect the maximum number of ADRs that could be created upon exercise of such warrants. Example: An issuer whose primary listed security is an ADR representing five shares of its common stock, has a listed class of warrants each exercisable into a single share of the common stock, with five million warrants outstanding. The issuer will be billed for annual fees for one million warrants (i.e., adjusted to reflect the number of ADRs that could be created with five million shares).

The proposed amendments to the initial and annual fee provisions for listed warrants would apply to all warrants exercisable into common shares that are issued by a listed company whose primary listed security is an ADR. In the case of a listed company whose ADRs represent a multiple (a fraction) of a common share, the fees for any warrants issued by the company that are exercisable into equity securities underlying the ADR would be based on an adjustment downward (upward) of the number of warrants.⁵

2. Statutory Basis

⁴ Approximately 0.5% of the ADRs currently listed on the Exchange represent fractional share interests.

⁵ The Exchange notes that there is currently just one warrant listed on the NYSE that is exercisable into common stock underlying an ADR that is listed on the NYSE. This listed ADR represents 10 shares of the common stock.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4)⁷ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ in that it is 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 not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, the Exchange competes for listings with other national securities exchanges, and companies can easily choose to list on, or transfer to, those alternative venues. As a result, the fees the Exchange can charge listed companies are constrained by the fees charged by its competitors and the Exchange cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

The Exchange believes that the proposal to charge listing fees for warrants on an ADR-equivalent basis is equitable and not unfairly discriminatory because it would remove the anomalous outcome that a company whose listed ADRs represent multiple underlying common shares must pay higher fees for the listing of warrants exercisable into its listed equity securities

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

than are paid by a company whose common stock is listed directly or whose listed ADRs represent a single common share.

The Exchange recognizes that the proposal would result in a differential treatment of warrants issued by companies with ADRs listed on the Exchange from that of other issuers of warrants, leading to lower bills in many cases for the companies with listed ADRs. However, the Exchange notes that companies with listed ADRs that represent multiple underlying shares (or fractional shares) face unique circumstances when deciding how to structure their warrants. If those companies want to market their warrants in both their home market and the United States, there are clear advantages to the company and its investors if the same security is issued in both markets. In particular, selling the same security avoids pricing confusion and, by ensuring complete fungibility, facilitates the movement of warrants between the two markets in aftermarket trading. As the ADRs would not be traded in the home market and might not be properly understood by investors there, it is clear why a company would make the decision to issue warrants to purchase a single common share in both markets rather than selling warrants to purchase ADRs in the US market and warrants to purchase a single share in the home market. While other categories of listed companies may also sometimes choose to issue warrants that are exercisable for multiple listed common shares or a fraction of a common share, their reasons for doing so are not the same unique market structural reasons that cause foreign companies to do so when their listed equity security is an ADR. Consequently, while the proposal does result in a different treatment of foreign companies with listed ADRs in a very limited circumstance, the Exchange believes that this proposed difference in treatment is not unfairly discriminatory.

The Exchange also notes that foreign companies with listed ADRs would not always pay lower fees on warrants if this proposal was adopted. Rather, the issuer would always pay fees on

an ADR-equivalent basis, which would result in lower fees if the listed ADR represents multiple common shares and higher fees if it represents a fractional common share.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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. The proposed modified warrant listing and annual fee for issuers whose listed ADRs represent multiple underlying common shares will be applicable to all similarly situated issuers on the same basis.

The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange. The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable.

Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket 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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)¹¹ of the Act to determine whether the proposed rule change should be approved or 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-2021-52 on the subject line.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

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-2021-52. 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 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-2021-52 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).