

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95930; File No. SR-NYSE-2022-39)

September 27, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fee Provisions of the Listed Company Manual Applicable to Companies Listing Upon Emergence from Bankruptcy

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 September 14, 2022, 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 Exchange. 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 902.02 of the NYSE Listed Company Manual (the “Manual”) to: (i) modify the conditions under which a listed company can qualify for the reduced fees that are provided to companies listing upon emergence from bankruptcy; (ii) specify that any company listing in connection with an underwritten public offering is not eligible for the reduction in annual fees or a waiver of initial listing fees provided to companies emerging from bankruptcy under that rule; and (iii) reset the annual fee reduction rate for companies listing upon emergence from bankruptcy. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Annual Fees

Section 902.02 of the Manual includes a subsection entitled "Total Maximum Fee Payable in a Calendar Year by an Issuer Listing Upon Emergence from Bankruptcy" (the "Bankruptcy Subsection"), which sets forth a limitation on listing fees charged to companies that list upon emergence from bankruptcy. If an issuer lists upon emergence from bankruptcy, its annual fees will be calculated quarterly for the fiscal quarter in which it lists and in each of the succeeding 12 full fiscal quarters, at a rate of one-fourth of the applicable annual fee rate. The total fees (including listing fees and annual fees) that may be billed to such an issuer during this period will be subject to a \$25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. This fee cap is subject to the same exclusions as apply in relation to the \$500,000 per year fee cap described in Section 902.02 under the subsection "Total Maximum Fee Payable in a Calendar Year." If there are one or more fiscal quarters remaining in the year after the conclusion of the period described in this paragraph, the issuer

will, on a prorated basis, be billed the regular annual fee subject to the \$500,000 total fee cap for the remainder of that year.

The Exchange now proposes to amend the Bankruptcy Subsection to provide that an issuer will be entitled to the fee reductions and per year fee cap if it lists within 12 months of emergence from bankruptcy (rather than only if the issuer lists immediately upon emergence from bankruptcy). The Exchange believes that it is reasonable to expand the eligibility for the fee reductions set forth under the Bankruptcy Subsection to companies listing within 12 months of emergence from bankruptcy because these companies are subject to many of the same challenges as companies that list immediately upon emergence from bankruptcy. The Exchange notes that some companies choose not to list immediately upon emergence from bankruptcy or are unable to do so as they do not meet Exchange distribution standards until their post-emergence equity has traded for some time. The Exchange believes making the fee reduction available to companies within 12 months of emerging from bankruptcy would incentivize issuers to list on the Exchange, which should result in increased transparency and liquidity with respect to the issuer's securities

The Exchange also proposes to amend the Bankruptcy Subsection to provide that the fee limitations thereunder will not be available for any company listing in connection with an underwritten public offering. The Exchange made the following statement in connection with its original proposal of this fee provision:

Companies emerging from bankruptcy are typically not raising any new capital at the time of listing, so the payment of initial listing fees is more burdensome than for companies that are listing upon an initial public offering. Also, because of the desire in bankruptcy proceedings to ensure that creditors are paid as much as

possible, such companies are much more sensitive to both the initial and continued costs associated with listing.⁴

The Exchange notes that companies often plan to list immediately upon emergence from bankruptcy and that the costs of the listing are therefore considered in the context of the payments made to settle the claims of creditors as part of the reorganization plan authorized by the bankruptcy court. However, an underwritten public offering is by its nature a transaction that is separate from and subsequent to the bankruptcy reorganization process and typically does not happen directly after emergence. As all of the claims of the issuer's creditors in the bankruptcy process are settled at the time of the issuer's emergence from bankruptcy, the focus on maximizing payments to the creditors of the bankrupt company and the associated sensitivity to the continued costs of listing cited at the time of adopting this fee provision are no longer relevant in the case of a company listing in connection with an underwritten public offering at some point after emergence. Furthermore, the Exchange believes that the fact that such companies are raising capital at the time of listing will generally place them in a financially more secure position than other companies listing after emergence from bankruptcy and will generally make them more comparable to companies listing in connection with an initial public offering.

The Exchange also proposes to amend the Bankruptcy Subsection by resetting the fee reduction rate for qualified issuers listing on or after September 15, 2022. Specifically, if an issuer lists upon emergence from bankruptcy, its annual fees will be calculated quarterly for the fiscal quarter in which it lists and in each of the succeeding 12 full fiscal quarters, at a rate of one-half of the applicable annual fee rate, rather than at a rate of one-quarter of the applicable

⁴ See Securities Exchange Act Release No. 55421 (March 8, 2007): 72 FR 11925 (March 14, 2007) (SR-NYSE-2007-19).

rate as is the case under the rule as currently written. The Exchange believes that this adjustment is reasonable in light of the significant increase in the cost of services provided to issuers since the adoption of the current fee discount provision in 2007. The Exchange further believes that the proposed amended discounted fee structure will cause the affected issuers to pay fees that are more closely aligned with the cost of servicing their listings. This proposed amendment would not affect issuers that listed before September 15, 2022. Issuers with securities listed before that date would continue to pay the rate of one-fourth of the applicable annual fee rate as set forth in the current rule. The Exchange believes this is reasonable as these issuers made their decision to list on the Exchange on the basis of their eligibility for this reduced fee rate for the first 36 months of their listing and it would therefore be unfair to raise their fee cap during that period.

Initial Listing Fees

Section 902.02 also contains a provision waiving initial listing fees for certain categories of listings, including the listing of a company within 36 months of emergence from bankruptcy that has not had a security listed on a national securities exchange during such period. The Exchange proposes to exclude from this waiver any company listing in connection with an underwritten public offering. As is the case with the annual fee reduction for companies emerging from bankruptcy, the Exchange believes that the fact that such companies are raising capital at the time of listing will generally place them in a financially more secure position than other companies listing after emergence from bankruptcy and will generally make them more comparable to companies listing in connection with an initial public offering.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

the Act,⁵ in general, and furthers the objectives of Section 6(b)(4)⁶ 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,⁷ 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.

The Exchange believes that it is reasonable to expand the eligibility for the fee reductions set forth under the Bankruptcy Subsection to companies listing within 12 months of emergence from bankruptcy because those companies are subject to many of the same challenges as companies that list immediately upon emergence from bankruptcy. The Exchange notes that some companies choose not to list immediately upon emergence from bankruptcy or are unable to do so as they do not meet Exchange distribution standards until their post-emergence equity has traded for some time. The Exchange believes the proposed fee reduction would provide an incentive for those companies to list on the Exchange.

In this regard, the Exchange notes that the issuers that would benefit from the proposed expanded eligibility for the fee reduction, like all other listing applicants, would be required to satisfy the Exchange's listings standards as well as the other governance requirements and

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

standards that the Exchange requires of issuers listed on the Exchange. Accordingly, the Exchange believes that it is in the public's interest, and the interest of the issuer, to provide an opportunity for the increased transparency and liquidity that is attendant with listing on the Exchange and therefore that it is reasonable to provide the applicable fee reduction for such issuers. The Exchange believes that the number of additional issuers that will qualify for this fee reduction, as proposed, will be limited. The Exchange also believes that limiting the fee reduction to 12 months following emergence from bankruptcy is reasonable because, in the Exchange's opinion, it is a period of time that is sufficient for the issuer to proceed with its reorganization and meet the Exchange's qualifications for listing.

The Exchange believes that the proposed adjustment to the fee rate for eligible issuers under the Bankruptcy Subsection from one-quarter of the applicable annual fee rate to one-half of such rate is reasonable in light of the significant increase in the cost of services provided to issuers since the adoption of the current fee discount provision in 2007. The Exchange believes that the proposed amended discounted fee structure will cause the affected issuers to pay fees that are more closely aligned with the cost of servicing their listings. The Exchange further believes it is reasonable to continue to apply the rate of one-fourth of the applicable annual fee rate set forth in the current version of the Bankruptcy Subsection to issuers that listed prior to the adoption of the proposed amendment, as these issuers made their decision to list on the Exchange on the basis of their eligibility for this reduced fee rate for the first 36 months of their listing and it would therefore be unfair to raise their fee cap during that period.

The Exchange also believes that it is reasonable to not provide the initial fee waiver or the proposed annual fee reduction to companies that have emerged from bankruptcy within the previous 36 or 12 months, as applicable, but that are listing in connection with an underwritten

public offering. The Exchange notes that any company that is listing in connection with an underwritten public offering after emergence from bankruptcy will already have settled all claims of its creditors at the time of emergence, so the focus on maximizing payments to the creditors of the bankrupt company and the associated sensitivity to the continued costs of listing cited at the time of adopting this fee provision are not relevant to such companies. Furthermore, the fact that such companies are raising capital at the time of listing will generally place them in a financially more secure position than other companies listing after emergence from bankruptcy and will generally make them more comparable to companies listing in connection with an initial public offering. For the foregoing reasons, the Exchange believes that it does not constitute an inequitable allocation of fees and is not unfairly discriminatory to treat companies differently for purposes of these fee provisions if they are listing in connection with an underwritten public offering.

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 conditions on fees will be applicable to all similarly situated issuers on the same basis.

The Exchange does not believe that the proposed fee changes 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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ 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)¹⁰ 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:

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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-2022-39 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-2022-39. 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-2022-39 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

J. Matthew DeLesDernier,
Deputy Secretary.

¹¹ 17 CFR 200.30-3(a)(12).