

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96321; File No. SR-NYSE-2022-51)

November 15, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Initial and Annual Fees for Exchange Traded Products

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 November 7, 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 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 establish initial and annual fees for the listing of Exchange Traded Products on the Exchange. 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.

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

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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.

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 establish initial and annual fees for the listing of Exchange Traded Products (“ETPs”)<sup>4</sup> on the Exchange by adopting a new Section 902.12 to the NYSE Listed Company Manual (the “Manual”).

The proposed changes respond to the current extremely competitive environment for ETP listings in which issuers can readily favor competing venues or transfer their listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The proposed changes are designed to establish a fee structure for the listing of ETPs on the Exchange that would incentivize issuers to list new products and transfer existing products as well as to maintain listings on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors.

Proposed Rule Change

As proposed, new Section 902.12 of the Manual would set forth initial listing and annual listing fees for listed ETPs. Proposed Section 902.12 would be titled “Listing Fees for Exchange Traded Products.”<sup>5</sup> Under the proposed heading, the Exchange would include the following text

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<sup>4</sup> See NYSE Rule 1.1(l). As discussed below, proposed Section 902.12 would incorporate the definition of ETP so issuers can easily identify the class of securities that would be subject to the initial and annual listing fees.

<sup>5</sup> The Exchange also proposes a conforming change to Section 902.02 (General Information on Fees) to add ETPs to the list of securities therein.

(new text underlined):

The Listing Fees and Annual Fees set out in this section apply to Exchange Traded Products as defined in NYSE Rule 1.1(l), which defines an “Exchange Traded Product” as a security that meets the definition of “derivative securities product” in Rule 19b-4(e) under the Securities and Exchange Act of 1934 (the “Act”).

Below this proposed text, a new heading titled “Initial Listing Fees” would be followed by a chart beneath setting forth proposed initial listing fees of \$20,000 (for up to and including 10 million shares), \$30,000 (for over 10 million up to and including 20 million shares) or \$40,000 (for over 20 million shares). As set forth in proposed footnote \*, the Exchange would waive the initial listing fees for issuers that transfer their listings from any other national securities exchange. The proposed listing fee waiver would apply to all class of securities of an ETP.

Further, the Exchange proposes a technical original listing fee of \$2,500 per application fixed charge, which may include multiple issues of securities. As explained in proposed footnote \*\*, a Technical Original Listing would occur as a result of a change in state of incorporation, reincorporation under the laws of same state, reverse stock split, recapitalization, creation of a holding company or new company by operation of law or through an exchange offer, or similar events affecting the nature of a listed security. As further explained, the proposed fee would apply if the change in the company’s status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their equity position or rights. The proposed fee and text is based on the technical original listing fee applicable to ETPs listed on the Exchange’s affiliate NYSE Arca, Inc.

(“NYSE Arca”).<sup>6</sup>

Finally, under a second new heading titled “Annual Listing Fees,” the Exchange proposes that ETPs would be charged annual listing fees at a rate of \$0.001025 per share, with a minimum fee of \$25,000. As set forth in proposed footnote \*\*\*, issuers transferring their listings from another national securities exchange would not be required to pay Annual Fees for the remainder of the calendar year in which the transfer occurs. The proposed waiver of Annual Fees would apply to all classes of securities.

The proposed fees for listed ETPs are the same as the fees currently applicable to listed Closed-End Funds set forth in Section 902.04 of the Manual.<sup>7</sup> Given the structural similarities between Closed-End Funds and ETPs, the Exchange believes that the anticipated costs associated with the listing and regulating ETPs, including costs related to issuer services, listing administration, product development and regulatory oversight, would be similar to Closed-End Funds. Given this correlation, the Exchange believes that applying the same fees to listed ETPs would be reasonable.

Each of the proposed changes described above are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes

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<sup>6</sup> See NYSE Arca Schedule of Fees and Charges for Exchange Services, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Listing\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Listing_Fee_Schedule.pdf).

<sup>7</sup> Under Section 902.04, a Closed- End Fund is charged initial listing fees when it first lists a class of common stock according to a tiered schedule. Under this tiered schedule, a Closed-End Fund pays \$20,000 (for up to and including 10 million shares), \$30,000 (for over 10 million up to and including 20 million shares) or \$40,000 (for over 20 million shares). Additionally, under Section 902.04, Closed-End Funds are subject to annual fees at a rate of \$0.001025 per share, subject to a \$25,000 minimum fee. In addition, a \$2,500 fee applies to applications for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>9</sup> 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,<sup>10</sup> 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 Proposed Change is Reasonable

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities, including the ETPs affected by the proposed fees. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS,<sup>11</sup> the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS Adopting Release”).

successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>12</sup>

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the proposal represents a reasonable attempt to establish pricing for ETPs on the Exchange. As noted, ETPs are structurally similar to Closed-End Funds and the Exchange anticipates devoting substantially similar resources to the listing and regulation of ETPs. Therefore, the Exchange believes that it is reasonable and represents an equitable allocation of its fees among market participants to apply the same initial and annual fees to issuers of listed ETPs as the Exchange currently charges issuers of Closed-End Funds.

Further, the Exchange believes it is reasonable to not charge a listing fee upon listing and to not charge an annual fee for the remainder of the calendar year after an ETP transfers to the Exchange because such a transferring ETP would have already paid listing and/or annual listing fees to the predecessor national securities exchange and may incur multiple listing and/or annual fees in the same year in connection with a listing transfer, which may operate as a disincentive to transferring a listing to the Exchange that the issuer has determined is preferable based on the issuer’s assessment of the Exchange’s services, value and market quality. Due to the very limited anticipated loss of revenue associated with the proposed waiver, the Exchange does not

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<sup>12</sup> See Regulation NMS Adopting Release, 70 FR at 37499.

expect the proposed fee waiver to affect its ability to devote the same level of resources to its oversight of its listed issuers that benefit from the waiver as it does for other issuers or, more generally, impact its resource commitment to its regulatory oversight of the listing process or its regulatory programs.

#### The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. In the prevailing competitive environment, issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable.

The proposed listing and annual fees for ETPs are equitable because the proposed increased annual fees would apply uniformly to all issuers. Moreover, the proposed fees would be equitably allocated among issuers because issuers would qualify for the listed fee based on issuing ETPs and for the annual fee based on the number of shares outstanding and under criteria applied uniformly to all such issuers. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed annual fees would be applicable to all existing and potential ETP issuers uniformly and in equal measure.

In addition, the Exchange believes the proposed waiver of listing and annual fees for ETPs transferring from another national securities exchange represents an equitable allocation of fees because the proposed waivers would apply to all issuers that transfer ETP listings to the Exchange on an equal basis and would enable all issuers transferring ETPs from any other national securities exchange to benefit from the same waivers with respect to listing and/or annual fees for the specified time period. The Exchange believes that the proposed waivers would therefore equitably allocate fees among issuers transferring ETP listings to the Exchange.

### The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, issuers are free to list elsewhere if they believe that alternative venues offer them better value.

The Exchange believes that the proposal is not unfairly discriminatory because the same fee schedule will apply to all issuers of ETPs listed on the Exchange.

In addition, Exchange Listed Products have substantial structural similarities to Closed-End Funds and the Exchange believes it is therefore it is not unfairly discriminatory to offer the same listing fees for ETPs as are currently applicable to Closed-End Fund products. Conversely, ETPs are not similar to any other class of securities listed on the Exchange, so the Exchange does not believe it is unfairly discriminatory to charge different fees for the listed ETPs than it does for any other class of listed securities other than Closed-End Funds.

In addition, the Exchange believes that the proposed waiver of listing and annual fees for ETPs transferring from another national securities exchange is not unfairly discriminatory because the proposed amendment would enable all issuers transferring ETPs from any other national securities exchange to benefit from the same waivers with respect to fees for the specified time period. The proposed waivers would apply to all issuers of securities that transfer ETP listings to the Exchange. Therefore, the Exchange believes there would be no unfair discrimination against issuers of securities transferring ETP listings to the Exchange. Further, the Exchange believes that the proposed waivers are not unfairly discriminatory with respect to issuers that are already listed on the Exchange because, as noted above, issuers transferring ETPs from other markets may already have paid listing and/or annual fees at their predecessor exchange and may incur multiple listing and/or annual fees in the same year in connection with a

listing transfer, which may operate as a disincentive to transferring an ETP listing to the Exchange. As also noted, due to the very limited anticipated loss of revenue associated with the proposed waiver, the Exchange does not expect the proposed fee waiver to affect its ability to devote the same level of resources to its oversight of its listed issues that benefit from the waiver as it does for other issuers or, more generally, impact its resource commitment to its regulatory oversight of the listing process or its regulatory programs.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> the Exchange believes that the proposed rule change would not 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 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 fee changes impose a burden on competition.

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<sup>13</sup> See 15 U.S.C. 78f(b)(8).

*Intramarket Competition.*

The proposed changes are designed to attract listings to the Exchange by establishing listing and annual fees for an ETPs listed under a new rule. The Exchange believes that the proposed changes would incentivize issuers to develop and list new products, transfer existing products to the Exchange, and maintain listings on the Exchange. The proposed fees would be available to all issuers, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.*

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 chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for ETPs to reflect the revenue and expenses associated with listing on the Exchange.

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)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder, because it establishes a due, fee, or

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2022-51 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-2022-51. 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

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<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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-2022-51 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>17</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>17</sup> 17 CFR 200.30-3(a)(12).