

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101837; File No. SR-NYSE-2024-70)

December 6, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.02 of the NYSE Listed Company Manual to Establish a Flat Annual Listing Fee Payable by a Limited Partnership That is At Least 40% Owned by Another Company Listed on the Exchange

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 November 26, 2024, 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 902.02 of the NYSE Listed Company Manual (the “Manual”) to establish a flat annual listing fee payable by a limited partnership that is at least 40% owned by another company listed on the Exchange. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

The Exchange proposes to amend Section 902.02 of the Manual to establish the flat annual listing fee payable by a limited partnership that is at least 40% owned by another company listed on the Exchange (such limited partnership, an "Affiliated Limited Partnership"). The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2025.

All companies listed on the Exchange are obligated to pay annual listing fees. The annual fee for operating companies and limited partnerships is calculated on a per-share basis based on the number of shares issued and outstanding, subject to a minimum and maximum fee.

Many limited partnerships listed on the Exchange are affiliated with another company listed on the Exchange.⁴ For example, the general partner of a listed limited partnership may be a wholly-owned subsidiary of a separate listed company. Similarly, a listed company may have a substantial ownership interest in the outstanding equity securities of a separate listed limited partnership. In such instances, there is generally overlap between the listed company and limited partnership in terms of managing personnel. Therefore, the Exchange experiences efficiencies in communicating with the issuers and servicing the two listings. However, under the Exchange's

⁴ Where such affiliation exists, generally it is between a listed limited partnership and a listed operating company. In some instances, however, the affiliation is between two listed limited partnerships.

current fee schedule, the listed company and affiliated listed limited partnership are each separately subject to the full annual fee schedule as if they were unaffiliated issuers.

To address the cost savings that is experienced from servicing two affiliated listings, the Exchange proposes to amend Section 902.02 of the Manual to specify that where at least 40% of the outstanding equity interest in a listed limited partnership is owned, either directly or indirectly, by a separate listed company, the annual fee for the primary class of common shares listed by such affiliated limited partnership will be set at the minimum annual fee for a primary class of common shares in effect at that time, as such minimum annual fee is specified in Section 902.03 of the Manual.⁵ Similarly, the annual fee for any additional class of common shares listed by an affiliated limited partnership will be set at the minimum annual fee for an additional class of common shares in effect at that time, as such minimum fee is specified in Section 902.03 of the Manual.⁶ The aforementioned annual fee for a primary or additional class of common shares listed by an Affiliated Limited Partnership shall be referred to as the “Affiliated Limited Partnership Annual Fee.” The annual fee schedule applicable to the listed company that owns the equity interest in the affiliated listed limited partnership will remain unchanged.

In order to qualify for the Affiliated Limited Partnership Annual Fee in any calendar year, the Exchange proposes that an issuer, other than a new listing, must submit satisfactory proof to the Exchange no later than the first trading day of such calendar year to demonstrate that it meets the ownership requirements specified above. In addition, the Exchange proposes that the Affiliated Limited Partnership Annual Fee will be applied to the annual fees payable with respect to the first partial year of listing by any newly-listed company that is able to demonstrate at the

⁵ Currently, such minimum fee is \$80,000.

⁶ Currently, such minimum fee is \$20,000. In the Exchange’s experience, generally a limited partnership lists only one class of common shares.

time of listing that it qualifies as an Affiliated Limited Partnership of a listed company.

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 Section 6(b)(4)⁸ 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,⁹ 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 not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Sections 902.02 to establish a fixed annual fee for Affiliated Limited Partnerships.

The Proposed Changes are Reasonable

The Exchange believes that the proposed changes to the annual fee for Affiliated Limited Partnerships is reasonable. In that regard, the Exchange notes that when a listed company owns a substantial equity stake in a listed limited partnership there are typically efficiencies experienced by the Exchange in terms of overlapping management and board members. The Exchange notes that the proposed change will be fee-neutral for some issuers (i.e. those that

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

already pay only the minimum annual fee) and will result in an annual fee reduction for other issuers (i.e. those whose annual fee is higher than the minimum fee under the current fee structure). However, because the Exchange experiences similar costs savings as a result of efficiencies in servicing the listing of affiliated limited partnerships, it believes it is reasonable to establish a set annual fee (equal to the minimum annual fee for a primary or additional class of equity securities then in effect) for the Affiliated Limited Partnership.

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities affected by the proposed annual fee adjustments. 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,¹⁰ 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 successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹¹

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.

¹⁰ Securities Exchange Act Release No. 34-51808 (June 9, 2005); 70 FR 37496 (June 29, 2005) (“Regulation NMS”).

¹¹ See Regulation NMS, 70 FR at 37499.

Given this competitive environment, the adoption of the proposed Affiliated Limited Partnership Annual Fee will enable the Exchange to more effectively compete for limited partnership listings.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed adoption of the Affiliated Limited Partnership Annual Fee is equitable because it better reflects the costs the Exchange incurs in servicing the listing of an Affiliated Limited Partnership. As discussed above, the Exchange experiences efficiencies in servicing the listing of an Affiliate Limited Partnership in the form of streamlined communication with management that it does not similarly experience with unaffiliated companies. The Exchange therefore believes it is equitable to establish the Affiliated Limited Partnership Annual Fee to reflect these efficiencies.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers because it simply reflects the cost savings experienced by a particular category of issuers in which another listed company has a substantial ownership interest. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue.

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 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.

Intramarket Competition.

The proposed amended fees will be charged to all listed 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.

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, 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.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and Rule 19b-4(f)(2) thereunder¹³ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-70 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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4.

All submissions should refer to file number SR-NYSE-2024-70. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-70 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).