

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87555; File No. SR-NYSEAMER-2019-49)

November 15, 2019

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending its Annual Listing Fees for Equity Securities

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 4, 2019, NYSE American LLC (“NYSE American” 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 its annual listing fees for equity securities. The proposed 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 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 its annual listing fees for equities set forth in Section 141 of the NYSE American Company Guide (the "Company Guide") with effect from the beginning of the calendar year commencing on January 1, 2020. These amendments only reflect changes in the amounts charged on an annual basis for listed securities and do not reflect any change in the services provided to the issuer in connection with such listing.

Currently, the annual fee schedule in relation to any listed issue of equity securities is as follows: \$45,000 for issues of 50 million shares or fewer; \$60,000 for issues of more than 50 million shares and not more than 75 million shares; and \$70,000 for issues with in excess of 75 million shares outstanding. The Exchange proposes to increase the annual fee for issues of 50 million shares or fewer from \$45,000 to \$50,000. In addition, it proposes to charge \$70,000 for all issues with more than 50 million shares outstanding (i.e., an increase of \$10,000 for issues with more than 50 million shares and not more than 75 million shares outstanding and no increase with respect to any issue with more than 75 million shares outstanding).

The Exchange proposes to make the aforementioned fee increases in Section 141 to reflect increases in the cost of servicing listings and conducting the required associated regulatory oversight. The revised fees will be applied in the same manner to all issuers and the changes will not disproportionately affect any specific category of issuers. The Exchange believes that it is appropriate to adopt a two-tier annual listing fee schedule rather than the current three-tier approach is equitable [sic] because the Exchange has observed that the costs associated with servicing the listings of issuers in the two current higher tiers are generally very

similar and the proposed merging of those tiers therefore better aligns the fee structure with the costs associated with listing those issuers.

The Exchange also proposes to remove from Section 141 several references to fee provisions that are no longer relevant, as those fee rates are no longer applicable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4)⁵ 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,⁶ 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 equity securities. 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, the Commission highlighted the importance of market forces in

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).

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.”⁷

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 small increase to the annual fees for equity securities represents a reasonable attempt to address the Exchange’s increased costs in servicing these listings while continuing to attract and retain listings.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. Adopting a two-tier annual listing fee schedule rather than the current three-tier approach is equitable because the Exchange has observed that the costs associated with servicing the listings of issuers in the two current higher tiers are generally very similar and the proposed merging of those tiers therefore better aligns the fee structure with the costs associated with listing those issuers.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the same fee schedule will apply to all listed issuers. Further, the Exchange operates in a competitive

⁷ See Regulation NMS, 70 FR at 37499.

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.

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.

The proposed removal of text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

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 in response, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee changes 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

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:

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-NYSEAMER-2019-49 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-NYSEAMER-2019-49. 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

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2019-49 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

Jill M. Peterson
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).