

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68470; File No. SR-NYSE-2012-68)

December 19, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Sections 902.02 and 902.03 of the New York Stock Exchange LLC Listed Company Manual to Introduce an Initial Application Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 6, 2012, New York Stock Exchange LLC (“NYSE” or “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 Sections 902.02 and 902.03 of its Listed Company Manual to introduce an Initial Application Fee. The Exchange proposes to immediately reflect the proposed changes in the Listed Company Manual, but not to implement the proposed changes until January 1, 2013. The text of 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 it

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Sections 902.02 and 902.03 of its Listed Company Manual to introduce an Initial Application Fee. The Exchange proposes to immediately reflect the proposed changes in the Listed Company Manual, but not to implement the proposed changes until January 1, 2013.³

The Exchange proposes to introduce an Initial Application Fee of \$25,000 within Section 902.03 of the Listed Company Manual, which would be effective January 1, 2013.⁴ An issuer would be required to pay an Initial Application Fee if it applied to list an equity security on the Exchange, except that an issuer:

- (i) applying to list within 36 months following emergence from bankruptcy and that has not had a security listed on a national securities exchange during such period;

³ The Exchange has proposed changes to the Listed Company Manual, as reflected in the Exhibit 5 attached hereto, in a manner that would permit readers of the Listed Company Manual to identify the changes that would be implemented on January 1, 2013. The Commission notes that the Exhibit 5 referenced in the previous sentence is attached to the filing, not to this Notice.

⁴ The Exchange also proposes to include references to the Initial Application Fee in Section 902.02, where necessary and appropriate. Additionally, the Exchange proposes to amend certain text of Section 902.03 to account for the proposed inclusion of the Initial Application Fee therein. The Exchange also proposes to amend the text describing the implementation of Section 902.03 to reflect that the reference to the proposed rule change that implemented the text therein added the original text, not the text in its current form.

(ii) relisting a class of stock that is registered under the Securities Exchange Act of 1934 (the “Act”) that was delisted from a national securities exchange and only if such delisting was:

(a) within the previous 12 calendar months; and

(b) due to the issuer’s failure to file a required periodic financial report with the Commission or other appropriate regulatory authority; or

(iii) transferring the listing of any class of equity securities from any other national securities exchange

would not be required to pay an Initial Application Fee in connection with its application for listing such equity security.

Accordingly, issuers for whom the Initial Application Fee waivers would be applicable would generally be the same as the issuers for whom Listing Fees would be waived, as provided in Section 902.02 of the Listed Company Manual.⁵

As with the Listing Fee waivers, none of the Initial Application Fee waivers would be applicable to the listing of any class of securities if the issuer’s primary class of common stock remains listed on another national securities exchange. The Initial Application Fee would be non-refundable.

An issuer applying to list an equity security on the Exchange is subject to a preliminary confidential review by NYSE Regulation, Inc. (“NYSER”) in which NYSER determines the issuer’s qualification for listing. As set forth in Section 702.02 of the Listed Company Manual, if NYSER determines in connection with this preliminary confidential review that the issuer is

⁵ See Securities Exchange Act Release No. 68017 (October 9, 2012), 77 FR 63404 (October 16, 2012) (SR-NYSE-2012-47). The Initial Application fee would only apply with respect to the listing of equity securities. Listing Fees are not limited in this respect.

qualified for listing, the issuer is informed that it has been cleared as eligible to list and that the Exchange will accept a formal Original Listing Application from the Issuer. It is the Exchange's practice to notify the issuer of its eligibility clearance and the conditions to its listing by means of a letter (the "pre-clearance" letter).

For an issuer subject to the Initial Application Fee, its payment would be a prior condition to eligibility clearance being granted. As a practical matter, the Exchange anticipates that an issuer would pay the Initial Application Fee after NYSE has completed its preliminary confidential review and has determined that the issuer is eligible to submit a formal Original Listing Application, but before the "pre-clearance" letter has been issued. Typically, the Exchange is in contact with an issuer prior to the issuance of a "pre-clearance" letter and provides oral confirmation of the issuer's eligibility clearance prior to the issuance of the "pre-clearance" letter.

The Initial Application Fee would be applied towards the applicable Listing Fees for an issuer that lists on the Exchange. If an issuer paid an Initial Application Fee in connection with the application to list an equity security but did not immediately list such security, the Issuer would not be required to pay a subsequent Initial Application Fee if it later listed such security so long as (i) the issuer had a registration statement regarding such security on file with the Commission, or, (ii) if the issuer withdrew its registration statement, the issuer refiled a registration statement regarding such security within 12 months of the date of such withdrawal. The Exchange is proposing the Initial Application Fee because it would allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange. In addition, the Initial Application Fee would provide a disincentive for

impractical applications by issuers. The proposed change is not otherwise intended to address any other matter, and the Exchange is not aware of any significant problem that issuers would have in complying with the proposed change.

2. Statutory Basis

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) and Section 6(b)(5) of the Act,⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed Initial Application Fee of \$25,000 is reasonable because it would allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange. In this regard, the Exchange believes that the Initial Application Fee of \$25,000 is reasonably related to the amount of time, resources and cost associated with the Exchange's review of an initial application for listing an equity security.⁸ Furthermore, the Exchange believes that the Initial Application Fee is reasonable because it would provide a disincentive for impractical applications by issuers.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and 15 U.S.C. 78f(b)(5).

⁸ The Exchange notes that NASDAQ also charges a non-refundable \$25,000 application fee to issuers on The NASDAQ Global Market. See NASDAQ Rule 5910. See also Securities Exchange Act Release No. 61669 (March 5, 2010), 75 FR 11958 (March 12, 2010) (SR-NASDAQ-2009-081). NASDAQ also charges a non-refundable \$5,000 application fee to issuers on The NASDAQ Capital Market. See NASDAQ Rule 5920. See also Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR-NASDAQ-2009-018).

The Exchange believes that the Initial Application Fee is equitable and not unfairly discriminatory because it would be charged to all issuers that apply for listing an equity security on the Exchange, except, as proposed, those issuers that qualify for a waiver. In this regard, the Exchange believes that it is equitable and not unfairly discriminatory to charge an Initial Application Fee to issuers that apply to list an equity security, but not to issuers of other types of securities (e.g., closed-end funds or structured products). Specifically, while the Exchange conducts a comprehensive and thorough review of every listing application it receives, regardless of security type or issuer, the Exchange believes that its costs associated with processing and evaluating an issuer's application to list an equity security on the Exchange are generally significantly higher than the costs associated with other types of securities, such that it is equitable and not unfairly discriminatory to charge the Initial Application Fee only to issuers of equity securities. In this regard, the Exchange notes that the review that is required to be performed with respect to an issuer of an equity security is more extensive than that required for the review of, for example, an issuer of a closed-end fund.

The Exchange believes that it is reasonable to waive the Initial Application Fee for an issuer that applies to list within 36 months following emergence from bankruptcy, so long as such issuer has not had a security listed on a national securities exchange during such period, because this will incentivize such issuer to list its security on the Exchange, which will result in increased transparency and liquidity with respect to the issuer's security, thereby benefiting investors. In this regard, the Exchange notes that the issuer, like all other listing applicants, would be required to satisfy the Exchange's listings standards as well as the other governance requirements and 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 waive the Initial Application Fees for such issuers. The Exchange believes that the number of additional issuers that will qualify for this waiver, as proposed, will be limited. The Exchange also believes that limiting the waiver period to 36 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 meet the Exchange's qualifications for listing.

The Exchange also believes that it is reasonable to limit the waiver to issuers that have emerged from bankruptcy but have not yet had a security listed on a national securities exchange during such period because if an issuer has already listed its security post-emergence, it has already exposed itself to the requirements and transparency associated with listing on a national securities exchange, which is what the Exchange is incentivizing by waiving the Initial Application Fees. The Exchange also believes that this is equitable and not unfairly discriminatory because the goal of the waiver is to incentivize listing, and the transparency and public benefits (e.g., increased liquidity) that are attendant therewith. Accordingly, these goals would already be achieved for an issuer that has already listed on another national securities exchange post-emergence, and to waive the Initial Application Fee would therefore be inconsistent with the waiver's purpose.

The Exchange also believes that it is reasonable to provide a waiver of the Initial Application Fee to an issuer listing a class of stock that is registered under the Act that was delisted from a national securities exchange if such delisting was (a) within the previous 12 calendar months, and (b) due to the issuer's failure to file a required periodic financial report with the Commission or other appropriate regulatory authority. The Exchange anticipates that

these will be companies that were otherwise in compliance with the quantitative listing standards of the Exchange or another national securities exchange, but that fell behind on their Act reporting because their auditors or the Commission required restatements of their financial statements and that these companies will relist on the Exchange (or another national securities exchange) as soon as their filings are up to date. The Exchange believes that it would be appropriate to waive Initial Application Fees for these companies and that such a waiver does not constitute an inequitable or unfairly discriminatory allocation of fees because such companies would have previously paid an initial listing fee to another national securities exchange, and that to make them pay the Initial Application Fee, which would be applied towards the applicable Listing Fee for an issuer that lists on the Exchange, would further penalize them unnecessarily. The Exchange also believes that limiting the waiver period to 12 months after delisting is reasonable because the waiver would apply to issuers that were delisted within a relatively recent time frame.

The Exchange believes that it is equitable and not unfairly discriminatory to charge Initial Application Fees to issuers that were delisted for reasons other than financial reporting because these other issuers would not have been in compliance with the quantitative listing standards of the Exchange at the time of delisting from a listing standards perspective, and such lack of compliance would be due to reasons other than financial reporting. In this regard, the Exchange believes that these issuers differ from other delisted issuers because such delisting was not due to a quantitative listing standard of the Exchange, but instead was because of a financial reporting requirement under the Act. Similarly, the Exchange believes that it is equitable and not unfairly discriminatory to charge Initial Application Fees to issuers that are registered under the Act but not previously listed on a national securities exchange because such issuers would not have

previously paid an Initial Application Fee to the Exchange or, presumably, a similar fee to another national securities exchange.

The Exchange also believes that this aspect of the proposed change is equitable and not unfairly discriminatory because, in addition to applying equally to all issuers that are applying to list equity securities on the Exchange, it would differentiate between those issuers whose securities are delisted solely for financial reporting reasons and those issuers whose securities were delisted for other reasons or were not previously listed on a national securities exchange. In this regard, the Exchange believes that these issuers would not be unfairly penalized if they are required to pay Initial Application Fees.

The Exchange also believes that it is reasonable to provide a waiver of the Initial Application Fee to an issuer transferring the listing of any class of equity securities to list on the Exchange because such an issuer would have been free to continue to list on the other national securities exchange on which it was previously listed. In this regard, the issuer would have already paid a listing fee and may have already paid an application fee to the other exchange for the initial application to list on that market.⁹ Accordingly, it is reasonable to not charge the Initial Application Fee so as to avoid double-charging issuers for the listing of their equity securities. It is also equitable and not unfairly discriminatory to waive the Initial Application Fee to an issuer transferring the listing of any class of equity securities to list on the Exchange because all issuers transferring the listing of their equity securities in this manner would be eligible for the waiver of the Initial Application Fee. It is also equitable and not unfairly discriminatory because such issuers would be under no obligation to transfer their listing to the Exchange and would be disincentivized to do so if they were subject to the Initial Application

⁹ See e.g., Id. [sic]

Fee. In this regard, the waiver would contribute to providing issuers with the ability to choose the listing market that best suits their needs and that is the ideal market for listing their equity securities.

Overall, the Exchange believes that instances of the Initial Application Fee waiver being granted to issuers that apply to list on the Exchange will be relatively rare. Accordingly, the Exchange does not anticipate that it will experience any meaningful diminution in revenue as a result of the proposed waiver and therefore does not believe that the proposed waiver would in any way negatively affect its ability to continue to adequately fund its regulatory program or the services that the Exchange provides to issuers.

Additionally, the Exchange believes that the non-substantive changes that are proposed, which are technical and conforming changes, are reasonable because they will ensure that the proposed substantive changes are incorporated in a clear and accurate manner. These changes are also equitable and not unfairly discriminatory because they will benefit all issuers and all other readers of the Listed Company Manual.

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.

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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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.

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-2012-68 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- NYSE-2012-68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

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 such 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 publicly available. All submissions should refer

to File Number SR- NYSE-2012-68 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

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).