

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71273; File No. SR-NYSE-2013-83)

January 9, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Effective as of January 1, 2014 Recently Approved Changes to NYSE Rules 451 and 465, and the Related Provisions of Section 402.10 of the NYSE Listed Company Manual Concerning Charges by Member Organizations for Processing and Forwarding Proxy and Other Issuer Communications to Beneficial Owners, and Establishing a Fee Under Certain Conditions for an Enhanced Brokers' Internet Platform

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 December 31, 2013, 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 and II 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 make effective as of January 1, 2014 recently approved changes to NYSE Rules 451 and 465, and the related provisions of Section 402.10 of the NYSE Listed Company Manual, which (i) provide a schedule for the reimbursement of expenses by issuers to NYSE member organizations for the processing of proxy materials and other issuer communications provided to investors holding securities in street name, (ii) establish a supplemental fee for each account that elects or converts to electronic delivery while having access to an Enhanced Brokers' Internet Platform ("EBIP") and (iii) set forth further conditions

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

to collection of the EBIP fee. 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 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

Following a multi-year effort that began with the formation of the Exchange's Proxy Fee Advisory Committee in September 2010, the Securities and Exchange Commission by order dated October 18, 2013 approved the proposed changes to the schedule for the reimbursement of expenses by issuers to NYSE member organizations for the processing of proxy materials and other issuer communications provided to investors holding securities in street name.⁴ Neither the Exchange's rule filing nor the SEC Approval Order made reference to a specific effective date for the new rules, which means that the amended rules took effect on the date of SEC approval. Representatives of the intermediaries that serve almost all the NYSE member organizations involved in effecting proxy distributions to street name shareholders have now brought to the Exchange's attention that they require some lead time in order to be able to prepare to meet the

⁴ Securities Exchange Act Release No. 70720, October 18, 2013, 78 FR 63530 ("SEC Approval Order"), approving SR-NYSE-2013-07 ("Proxy Fee Rule Filing").

new requirements and implement the new price schedule contained in the amended rules. For the reasons explained more fully below, the Exchange proposes to specify that the rule amendments shall become effective on January 1, 2014 and shall apply to shareholder communication and proxy distributions with respect to which the record date occurs on and after that date. In addition the Exchange proposes that the new supplemental fee of 99 cents for each new account that elects, and each full package recipient among a brokerage firm's accounts that converts to, electronic delivery while having access to an EBIP⁵ will be charged in relation to any such election or conversion occurring on or after January 1, 2014⁶. The Exchange also proposes that the changes regarding fees for providing non-objecting beneficial owner information shall apply to requests with respect to record dates occurring on or after January 1, 2014.

As noted in the Proxy Fee Rule Filing, a single intermediary, Broadridge Financial Solutions, Inc. (“Broadridge”), currently handles almost all proxy processing and distribution to street name shareholders in the U.S. Broadridge enters into contracts with NYSE member organizations to provide distribution and vote collection services to those firms, and acts as billing and collection agent for these NYSE member organizations in connection with reimbursements provided by the issuers whose materials are distributed. Subsequent to issuance of the SEC Approval Order, Broadridge informed the Exchange that the fee changes effected by the Proxy Fee Rule Filing will require significant changes to Broadridge’s financial reporting,

⁵ The EBIP fee does not apply to electronic delivery consents captured by issuers. For additional restrictions on collection of the EBIP fee, see Part 7 of NYSE Rule 451 and Section 402.10 of the Listed Company Manual.

⁶ The Exchange notes that the Proxy Fee Rule Filing contained a placeholder to specify the date on which the EBIP fee will cease to be in effect. The Exchange proposes to amend Rule 451 and Section 402.10 to specify that the EBIP fee will cease to be in effect on December 31, 2018.

collection and billing systems. Broadridge estimates that these changes will require over 6100 hours of work, including testing and quality assurance.

Specifically Broadridge has advised the Exchange that implementation of the new fee schedule will involve changes to invoicing applications and financial reporting systems to reflect all the multiple changes to the fee schedule, including changes in some twenty-five modules within the billing platform for invoicing, accruals, reporting and interfaces to front-end systems to source the data. This work is estimated to take approximately 1,200 hours. Additionally, systems work of approximately 2,250 hours will be needed regarding share range and voted/unvoted shares data to handle the change that permits issuers to request stratified NOBO lists. Broadridge also expects to implement a tracking system for broker clients with qualified EBIPs to identify eligible positions that may trigger the one-time EBIP fee and ensure that the fee is only charged one-time, and maintain five years of historical data, e-consent and vote participation records. Broadridge estimates that this work will require approximately 2,000 hours. Broadridge will also do development work on its client reporting systems, including incorporation of fee schedule changes for invoice presentment, and display of financial information for client and internal web-services, estimating that this will require approximately 700 hours.

Broadridge also notes that its NYSE member organization clients will be required to program their systems to distinguish managed accounts of five shares or less and fractional shares in all accounts to support the rule change that requires that such accounts be processed at no charge to the issuer. Broadridge also notes that it will have to review its contracts with all its NYSE member organization clients to determine what amendments may be necessary, for example to update fee schedules that are included within the contracts.

Broadridge notes that it will expect to test the system changes it is required to make to the same high standards it uses for all its systems conversions. The impact of Broadridge's systems is widespread, covering a significant number of member organizations that are its clients, and the approximately 12,000 issuers whose materials are distributed.

The Exchange did address the issue of whether to specify an effective date for the proxy fee rule changes in its response to comments dated May 17, 2013⁷. It noted that it had requested Broadridge to specify whether they required a specific amount of lead time to implement the proposed changes, and that Broadridge had stated in their comment letter that "Broadridge is prepared to implement the new fee structure soon after the proposal is approved by the SEC."⁸ Broadridge now indicates that it does in fact require lead time for the reasons noted herein.

At the Exchange's request, Broadridge estimated the impact of a delay in the effective date on issuers.⁹ Looking at all corporate issuers that have (or are likely to have) record dates between October 18, 2013 and December 31, 2013, Broadridge estimated there were 774 issuers in this category, of whom 92% would experience a fee impact, up or down, of less than \$1,000. Of the remaining 8% of issuers that Broadridge estimates would experience a fee impact, up or

⁷ See letter to Elizabeth M. Murphy, Secretary, Commission from Janet McGinnis, EVP & Corporate Secretary, NYSE Euronext, dated May 17, 2013 ("NYSE Letter").

⁸ In the NYSE Letter, the Exchange also noted that SIFMA, in a March 18, 2013 comment letter, had suggested an effective date in January 2014. The Exchange did not believe that such an extensive lead time would be necessary, given that Broadridge appeared able to be ready more quickly.

⁹ Broadridge based its fee impact estimates on invoices from the prior year's proxy season.

down, of more than \$1,000, approximately 6.6%, (or 51 issuers)¹⁰ will pay higher fees as a result of the delay and 1.7% (or 13 issuers)¹¹ will pay lower fees as a result of the delay.

The Exchange notes that a large majority of record dates will occur after the January 1, 2014 implementation date for meetings occurring during 2014 and that the impacted companies represent only a small minority of issuers that distribute proxies.

In light of the foregoing, the Exchange believes that an effective date of January 1, 2014 would be suitable to allow time for industry development work needed to implement the new fees in an orderly manner, while still permitting the changes to go into effect promptly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”) generally¹² and Sections 6(b)(5)¹³ and 6(b)(8)¹⁴ of the Act in particular. Section 6(b)(5)¹⁵ requires, among other things, that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers. Section 6(b)(8) prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁰ The impact on the 6.6% of issuers is that they will not benefit during this period from the new fee schedule which will result in their paying higher fees, in the aggregate, of 13.2%. The median percentage impact on this group will be higher fees of 13.0%.

¹¹ The fees of the 13 issuers whose fees will benefit from the delay will be a reduction of fees, in the aggregate, by 4.1%, with a median fee decrease of 5.0%.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed amendment is not designed to permit unfair discrimination within the meaning of Section 6(b)(5), as all issuers are subject to the same fee schedule and the Exchange attempted to estimate the impact of a short delay of the effectiveness of the new fees, and found that impact on the vast majority of issuers to be relatively minimal. Nor will member organizations and their agents derive any significant financial benefit from that delay. Rather, for member organizations the sole purpose and sole significant effect of the proposed delay in implementing the amended fees would be to provide such member organizations and their agents with an opportunity to accomplish the development work necessary to administer the new fees in an orderly fashion.

The Exchange believes that the proposed amendment does not impose any unnecessary burden on competition within the meaning of Section 6(b)(8). The short delay in effectiveness will provide all industry participants with time to prepare to operate under the new fees. Broadridge, as the largest of the intermediaries will have the largest number of clients impacted by the new fees, but presumably also has the significant resources needed to accomplish the work necessary. Other intermediaries have much smaller numbers of clients, and so presumably some greater ability to handle billing and client support in a more manual fashion for the time needed to transition their systems. For the foregoing reasons, the Exchange believes that its proposed fee schedule does not place any unnecessary burden on competition.

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. All of the NYSE member organizations and their service providers will benefit from the additional time

to prepare for the implementation of the amended fees and none of them will derive any advantage from that delay in relation to any other market participant.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to Exchange give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver should help minimize the potential for investor confusion as to the applicable proxy fees as well as ensure that the rules are clear on which fees apply, and when. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁰

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²¹ of the Act to determine whether the proposed rule 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-NYSE-2013-83 on the subject line.

Paper Comments:

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2)(B).

- 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-2013-83. 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; 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-NYSE-2013-83 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.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).