

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79515; File No. SR-NYSE-2016-80)

December 9, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.04 of the NYSE Listed Company Manual

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 30, 2016, 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 Section 902.04 of the NYSE Listed Company Manual (the “Manual”) to adopt a fee discount for issuers that list 20 or more closed-end funds 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 902.04 of the Manual to adopt a fee discount for issuers that list 20 or more closed-end funds on the Exchange. The proposed new discount will take effect on January 1, 2017. Currently, fund families that list between three and 14 closed-end funds receive a 5% discount off the calculated Annual Fee for each fund listed, and those with 15 or more listed closed-end funds receive a discount of 15%.⁴ Aggregate Annual Fees for any fund family are capped at \$1,000,000 in any given year.

Currently, a small number of fund families benefit from the \$1,000,000 fee cap. In most cases, fund families that benefit from the cap have a significant number of funds listed on the Exchange and would otherwise have paid fees far in excess of \$1,000,000. Therefore, the effective discount they receive to their uncapped fees typically exceeds 50%.

There are a number of other, smaller fund families that have 20 or more funds listed on the Exchange whose aggregate fees approach but do not exceed \$1,000,000 and who therefore do not benefit from the cap. Consequently, those fund families pay fees at a far higher effective fee rate than is paid by those fund families whose fees are capped. The purpose of the proposed 50% discount is to significantly reduce this disparity.

The Exchange believes that a reduction in the effective fee rate paid by fund families that have 20 or more listed funds, but do not benefit from the cap, would create an incentive for them

⁴ Closed-end funds are charged Annual Fees at a rate of \$0.001025 per share.

to initiate new funds, increasing competition in the industry. In particular, the Exchange believes that the proposed amendment may create an incentive for fund families to create a greater number of smaller funds than is currently the case, as smaller funds are particularly concerned about limiting their operating costs.

The Exchange believes that it is not unfairly discriminatory to provide a greater discount for fund families listing more than [sic] 20 funds than for smaller fund families, as a significant amount of the costs of conducting the Exchange's regulatory activities and providing client services with respect to a fund family are fixed costs and, consequently, the cost to the Exchange of servicing any incremental fund are smaller when that fund is part of a larger fund family than when it is part of a smaller fund family.

The Exchange does not believe that the proposed fee discount will have any effect on its ability to fund its regulatory activities.

The Exchange also proposes to amend Section 902.04 to remove obsolete references to fee levels that are no longer applicable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁵ in general, and furthers the objectives of Sections 6(b)(4)⁶ of the Exchange Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

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.

The Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Exchange Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. In particular, the Exchange believes the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it would create an effective fee rate for a group of smaller fund families that is more consistent with the effective fee rate paid by larger fund families that benefit from the fee cap provision of the rule. The proposed amendment would also promote competition, as it would lower the costs of operating a fund for many issuers and will therefore incentivize those issuers to create new funds.

The Exchange believes that it is not unfairly discriminatory to provide a greater discount for fund families listing more than [sic] 20 funds than for smaller fund families, as a significant amount of the costs of conducting the Exchange's regulatory activities and providing client services with respect to a fund family are fixed costs and, consequently, the cost to the Exchange of servicing any incremental fund are smaller when that fund is part of a larger fund family than when it is part of a smaller fund family.

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 Exchange Act. The proposed rule change is designed to provide a group of smaller issuers of closed-end

funds with an effective fee rate that is closer to the effective rate charged to larger issuers that benefit from the rule's fee cap provision. 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 change imposes a burden on 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)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4⁸ 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 Commission shall institute proceedings under Section 19(b)(2)(B)⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 15 U.S.C. 78s(b)(2)(B).

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-2016-80 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2016-80. 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 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 available publicly. All submissions should refer to File Number SR-NYSE-2016-80, 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.¹⁰

Eduardo A. Aleman
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).