

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82985; File No. SR-NYSE-2018-11)

April 3, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees Charged in Connection with the Filing of Supplemental Listing Applications in Connection with the Issuance of Convertible Securities

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 22, 2018, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its fees charged in connection with the filing of listing applications in relation to the issuance of securities convertible into or exchangeable or exercisable for additional securities of a listed class of common stock. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees charged in connection with the filing of listing applications in relation to the issuance of securities convertible into or exchangeable or exercisable for additional securities of a listed class of common stock ("Convertible Securities").

A listed company is required to submit a supplemental listing application ("SLAP") prior to any issuance of Convertible Securities. Each time a listed company submits a SLAP in connection with the issuance of Convertible Securities, it must pay the minimum fee of \$10,000 provided for by Section 902.03 of the Manual. The Exchange, however, does not charge any listing fees with respect to the common shares issuable upon conversion, exchange or exercise of such securities at the time of submission of the required SLAP. Rather, Section 902.02 of the Manual provides that the listed company will be charged at the end of the calendar year [sic] for any such common shares that are issued that year.<sup>4</sup>

The Exchange has noted that it is not unusual for a listed company to enter into a number of different transactions in which it issues Convertible Securities. Each such transaction requires the submission of a SLAP, and the payment of the \$10,000 minimum SLAP fee, incurring a

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<sup>4</sup> The Commission notes that Section 902.02 of the NYSE Listed Company Manual ("Manual") states that with respect to shares that are not issued at the time of listing, such as for Convertible Securities, listing fees will accrue on these securities as of the date of issuance and such accrued listing fees will be billed at the beginning of the following year along with the issuer's annual fees. See Section 902.02 of the Manual ("Timing of Listing Fees for Subsequent Issuances").

significant fee expense even where the transactions covered by the SLAPs are immaterial in size.

The Exchange proposes to amend Section 902.03 to limit the fee expense to listed companies. Under the proposed amendment, a \$10,000 SLAP fee will be billed with respect to the first SLAP solely in connection with the issuance of securities convertible into or exchangeable or exercisable for additional securities of a listed class that is submitted by a listed issuer in each calendar quarter. No additional SLAP fee will be billed for any other SLAP solely in connection with the issuance of securities convertible into or exchangeable or exercisable for additional securities of a listed class that is submitted during the rest of that calendar quarter.

The Exchange does not expect that the reduction in fee revenue associated with this proposed amendment will have any effect on its ability to finance its regulatory program.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the 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 Act,<sup>7</sup> 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

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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 that the proposed amendment is not unfairly discriminatory because it will be applied the same to all listed companies submitting SLAPs in connection with the issuance of Convertible Securities. The Exchange also notes that listed companies will be charged per share listing fees with respect to any shares of common stock issued upon conversion, exchange or exercise of the Convertible Securities, thereby ensuring that the fees associated with a Convertible Securities transaction will be reflective of the size of the transaction.

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 will not impose any burden competition as its sole purpose is to provide a limited relief from the listing fees a company incurs when it issues Convertible Securities in a series of separate transactions during a calendar quarter.

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)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes a due, fee, or other

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>10</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2018-11 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-NYSE-2018-11. 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

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<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-11, 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.<sup>11</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).