

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84854; File No. SR-NYSE-2018-61)

December 19, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.02 of the NYSE Listed Company Manual to Modify the Investment Management Entity Group Fee Discount

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 7, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (the “Manual”) to modify the Investment Management Entity Group Fee Discount. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Section 902.02 of the Manual provides for a fee discount applicable only to an Investment Management Entity⁴ and its Eligible Portfolio Companies⁵ (the "Investment Management Entity Group Fee Discount"). The Investment Management Entity Group Fee Discount is subject to a maximum aggregate discount of \$500,000 in any given year (the "Maximum Discount") distributed among the Investment Management Entity and each of its Eligible Portfolio Companies in proportion to their respective eligible fee obligations in such year.⁶ In addition to benefiting from the Investment Management Entity Group Fee Discount, the Investment Management Entity and each of the Eligible Portfolio Companies continue to have fees capped by the applicable company's individual Total Maximum Fee of \$500,000.

Currently, the Investment Management Entity Group Fee Discount is as follows:

- a 30% discount on all eligible fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment

⁴ An Investment Management Entity is a listed company that manages private investment vehicles not registered under the Investment Company Act.

⁵ An "Eligible Portfolio Company" of an Investment Management Entity is a company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company's initial listing.

⁶ The current rule provides that, for years prior to calendar 2019, the Investment Management Entity Group Fee Discount is based on both annual and listing fees paid in the applicable year and, for calendar 2019 and subsequent years, the discount is based only on annual fees.

Management Entity has two Eligible Portfolio Companies, subject to the Maximum Discount.

- a 50% discount on all eligible fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has three or more Eligible Portfolio Companies, subject to the Maximum Discount.

The Exchange proposes to modify the Investment Management Entity Group Fee Discount effective January 1, 2019. For calendar 2019 and all calendar years thereafter, the Investment Management Entity Group Fee Discount will be a 50% discount on all annual fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has one or more Eligible Portfolio Companies, subject to the Maximum Discount.

The Exchange established the Investment Management Entity Group Fee Discount⁷ because, in the Exchange's experience, an Investment Management Entity puts high-quality and experienced management teams in place at its portfolio companies prior to listing and the Investment Management Entity continues to provide significant support to those companies after listing. Consequently, those companies require lower levels of support from the NYSE's business and Regulation groups to assist them in navigating the initial and continued listing process and the Exchange devotes significantly smaller staff resources to those companies on average than to the typical newly-listed company that is not controlled prior to listing by an Investment Management Entity. The Exchange believed that it was reasonable to share some of

⁷ See Securities Exchange Act Release No. 79582 (December 16, 2016), 81 FR 93976 (December 22, 2016) (SR-NYSE-2016-70).

the cost savings derived from its relationship with an Investment Management Entity with the Investment Management Entity and its listed portfolio companies.

The Exchange now believes that it is appropriate to adjust the discount by providing it where there is a single listed portfolio company and to provide the discount at a fixed 50% level (rather than the current 30% and 50% tiers based on the number of Eligible Portfolio Companies), because the Exchange has observed that the reduction in work load and expense it experiences due to the relationship of an Eligible Portfolio Company to the Investment Management Entity are proportionally the same with respect to each Eligible Portfolio Company regardless of how many other Eligible Portfolio Companies there may be. Accordingly, the Exchange believes it is reasonable to provide a single tier discount without regard to the number of Eligible Portfolio Companies an Investment Management Entity may have. The Exchange also notes that the proposed amendment is substantially similar to a fee discount provided by NASDAQ⁸ and therefore will enable the Exchange to better compete for the listing of eligible companies.

The Exchange does not expect the reduction in revenues associated with the proposed fee change to be substantial or to have any effect on its ability to appropriately fund its regulatory program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4)¹⁰ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other

⁸ See Note 14 *infra*. [sic]

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ 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 Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend the Investment Management Entity Group Discount as set forth in this proposal, as the amended discount provision better reflects the benefits the Exchange derives from the relationship between and Investment Management Entity and its Eligible Portfolio Companies, as described in more detail above.

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.

¹¹ 15 U.S.C. 78f(b)(5).

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)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ 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)¹⁴ 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-NYSE-2018-61 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2018-61. 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. 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-2018-61 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.¹⁵

Brent J. Fields
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).