

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84935; File No. SR-NYSE-2018-64)

December 21, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Chapter 9 of the NYSE Listed Company Manual Relating to Fees for Business Development Companies

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 20, 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 Chapter 9 of the NYSE Listed Company Manual (the “Manual”) to provide that business development companies will be subject to the same fee schedule as domestic operating companies and no longer treated as closed-end funds for fee purposes. 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 15 U.S.C. 78a.

³ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 902.04 of the Manual sets forth listing fees applicable to all listed closed-end funds. Along with all other closed-end funds, these fees are applied to any closed-end fund that elects to be taxed as a business development company (“BDC”) and is listed under Section 102.04B of the Manual.

The purpose and operation of a business development company is very different from that of a non-BDC closed-end fund. A non-BDC closed-end fund is a vehicle for the passive investment in securities and the role of its management is limited to choosing when to buy and sell securities in the fund’s portfolio. By contrast, a condition to obtaining and retaining business development company status is that the business development company must make available management assistance to the companies in which it has made investments. As such, in the Exchange’s opinion, the purpose and operation of a business development company is therefore more analogous to that of an operating company than to a non-BDC closed-end fund.

In light of the Exchange’s opinion that BDCs function more like operating companies than they do like other closed-end funds, the Exchange believes it would be more consistent to subject them to the same fee requirements as are applied to domestic operating companies than to continue to apply to them the fees applicable to closed-end funds.⁴ Consequently, the

⁴ All listed BDCs are domestic companies, as only domestic entities can register under the Investment Company Act.

Exchange proposes to amend Sections 902.02, 902.03 and 903.04 of the Manual to state that BDCs will not be subject to the closed-end fund fee schedule in Section 902.04, but rather, that for all purposes in Chapter 9, BDCs listed under Section 102.04B will be treated the same as domestic operating companies (including the fees applicable to domestic operating companies set forth in Section 902.03) and will not be subject to the fees for closed-end funds as set forth in Section 902.04.

Under Section 902.04, a BDC is charged initial listing fees when it first lists a class of common stock, or first lists a class of preferred stock in a case where common stock is not already listed, according to a tiered schedule. Under this tiered schedule, a BDC pays \$20,000 (for up to and including 10 million shares), \$30,000 (for over 10 million up to and including 20 million shares) or \$40,000 (for over 20 million shares). By comparison, under the operating company fee schedule, a BDC will pay listing fees the first time it lists a class of common shares at a rate of \$0.004 per share. The first time that an issuer lists a class of common shares, the issuer is also subject to a one-time special charge of \$50,000, in addition to fees calculated according to the Listing Fee schedule.⁵ The minimum and maximum listing fees applicable the first time an issuer lists a class of common shares under the operating company fee schedule are \$150,000 and \$295,000, respectively, which amounts include the special charge of \$50,000. In light of the minimum payment of \$150,000, newly-listed BDCs will in all instances be subject to higher initial listing fees under the amended fee schedule than under the closed-end fund

⁵ A BDC will also be charged \$0.004 per share:

At the time it first lists, an issuer lists one or more classes of preferred stock or warrants, whether or not common shares are also listed at that time;

Once listed, an issuer lists a new class of preferred stock or warrants.

These types of listings are not subject to the special charge or to the minimum or maximum Listing Fees applicable to an initial listing of common shares.

schedule as currently in effect. The Exchange believes it is reasonable to bill BDCs under the operating company initial listing fee schedule rather than the closed-end fund initial listing fee schedule because: (i) in the Exchange's opinion, BDCs function more like operating companies than like other closed-end funds; and (ii) BDCs are generally subject to the same corporate governance requirements as operating companies, so the Exchange expends regulatory resources in determining the initial listing qualification of a BDC that are comparable to the effort involved in listing an operating company and significantly greater than in the case of a closed-end fund.

Under Section 902.04, BDCs are currently subject to annual fees at a rate of \$0.001025 per share, subject to a \$25,000 minimum fee. Other than a fund family discount for which BDCs are not typically qualified (as they are not generally part of a family of at least three listed funds), Section 902.04 does not include a limit on an issuer's annual fee obligations. By comparison, under the operating company fee schedule, BDCs will be charged \$0.0011 per share for common shares, preferred shares and warrants, subject to a \$68,000 minimum for the primary class of common shares or primary class of preferred stock (if there is no class of common shares listed), a \$20,000 minimum for any additional class of common shares, and a \$5,000 minimum for any class of warrants or preferred shares. In addition to these minimum payments, BDCs will benefit from the \$500,000 cap imposed on annual fees and listing fees set forth in Section 902.02. As a consequence of the higher minimum annual fee requirements and per share rates applicable to operating companies, BDCs with smaller numbers of shares outstanding will generally pay somewhat higher fees as a result of the proposed rule change. The Exchange believes this is reasonable in light of the fact that BDCs are subject to the same corporate governance requirements as operating companies and require the Exchange to expend comparable levels of regulatory resources. However, the application of the \$500,000 fee cap

may result in certain larger BDCs paying less in annual fees than would be the case under the closed-end fund schedule, as the closed-end fund fee schedule does not include a cap on annual fees. The Exchange believes this fee limitation is reasonable due to the economies of scale involved in dealing with large issuers.

The Exchange does not anticipate any reduction in revenues associated with the proposed amendments and does not expect them to have any effect on its ability to appropriately fund its regulatory program.

The proposed rule change will take effect as of January 1, 2019.

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)⁷ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ 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 it is reasonable to bill BDCs under the operating company initial listing fee schedule rather than the closed-end fund initial listing fee schedule because: (i) in the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

Exchange's opinion, BDCs function more like operating companies than like other closed-end funds; and (ii) BDCs are generally subject to the same corporate governance requirements as operating companies, so the Exchange expends regulatory resources in determining the initial listing qualification of a BDC that are comparable to the effort involved in listing an operating company and significantly greater than in the case of a closed-end fund.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to charge BDCs the same fees as domestic operating companies rather than charge them the closed-end fund fee schedule, as the Exchange believes that the purpose and operation of a BDC are more analogous to those of an operating company than to a non-BDC closed end fund and it is therefore more consistent to charge BDCs the same fees as are paid by domestic operating companies.

As a consequence of the higher minimum annual fee requirements and per share rates applicable to operating companies, BDCs with smaller numbers of shares outstanding will generally pay somewhat higher fees as a result of the proposed rule change. The Exchange believes this is reasonable in light of the fact that BDCs are subject to the same corporate governance requirements as operating companies and require the Exchange to expend comparable levels of regulatory resources. However, the application of the \$500,000 fee cap may result in certain larger BDCs paying less in annual fees than would be the case under the closed-end fund schedule, as the closed-end fund fee schedule does not include a cap on annual fees. The Exchange believes this fee limitation is reasonable due to the economies of scale involved in dealing with large issuers.

The Exchange does not anticipate any reduction in revenues associated with the proposed amendments and does not expect them to have any effect on its ability to appropriately fund its

regulatory program.

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.

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)¹¹ 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-2018-64 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-2018-64. 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,

¹¹ 15 U.S.C. 78s(b)(2)(B).

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-2018-64 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

Brent J. Fields
Secretary

¹² 17 CFR 200.30-3(a)(12).