

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85252; File No. SR-NYSE-2019-04)

March 6, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adjust Its Annual Fee Requirements for Listed Companies for Any Calendar Year in Which a Listed Company Consummates a Reverse Stock Split

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 February 22, 2019, 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 adjust its annual fee requirements for listed companies for any calendar year in which a listed company consummates a reverse stock split. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adjust its annual fee requirements for listed companies for any calendar year in which a listed company consummates a reverse stock split.

Sections 902.02 and 902.03 of the Manual set forth the Exchange's requirements with respect to the payment of annual fees by listed companies. Listed companies are billed annual fees on a per share basis (currently at a rate of \$0.0011 per share) based on the number of shares issued and outstanding (including treasury shares) on December 31 of the prior calendar year.⁴

The Exchange believes this is generally an appropriate approach, as it is unusual for listed companies to significantly reduce the number of shares outstanding during the course of the year and, in fact, companies often issue significant additional shares during the course of a year and they are not charged annual fees for those shares in the first partial year after their issuance (although companies are charged initial listing fees on any additional shares issued during the course of the year).

However, there may be a small number of listed companies each year that consummate reverse stock splits. A reverse stock split results in a significant reduction in the number of shares outstanding, usually resulting in the post-split shares outstanding representing a small percentage of the number of shares outstanding pre-split. One consequence of this is that the listed company's annual fees will reflect shares that are not outstanding for a portion of that year.

⁴ At the beginning of each calendar year, the Exchange invoices issuers for annual fees applicable to that year.

The Exchange believes it is appropriate to address this anomaly, particularly in light of the fact that a listed company generally only consummates a reverse stock split to address a low trading price and, in many cases, may be required to take the action to bring the company into compliance with Exchange continued listing standards.

For the foregoing reasons, the Exchange proposes to amend Section 902.02 of the Manual to include a new subsection providing that, notwithstanding any other provision of Section 902.02 with respect to the calculation of annual fees, in any calendar year in which a listed company consummates a reverse stock split, such company will be charged prorated annual fees for the period prior to such consummation based on the shares outstanding on December 31 of the immediately preceding year (“Original Shares Outstanding”). With respect to the remainder of that year, such company will be charged annual fees on a prorated basis based on the Original Shares Outstanding as adjusted by the reverse split ratio. The Exchange will make any appropriate adjustments to its billing procedures to implement this provision.

The Exchange notes that there are typically only a small number of reverse stock splits consummated by listed companies in the course of a year. Consequently, the proposed rule change would not affect the Exchange’s commitment of resources to its regulatory oversight of the listing process or its regulatory programs.

The Exchange also proposes to remove from Section 902.03 several references to fee provisions that are no longer relevant, as those fee rates are no longer applicable.

2. Statutory Basis

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

⁵ 15 U.S.C. 78f(b).

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,⁷ 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 adopt the proposed provision adjusting annual fees for companies that consummate reverse stock splits, as those companies would otherwise be paying annual fees on the basis of a far larger number of shares outstanding than is actually the case for a portion of the applicable calendar year. In addition, a listed company generally consummates a reverse stock split because it has a low stock price, including in many cases a stock price that is below Exchange continued listing requirements, so it is reasonable to encourage companies to take this action by reducing their fee burden. The Exchange will make any appropriate adjustments to its billing procedures to implement the proposed new provision.

The amendments to Section 902.03 simply remove outdated text and have no substantive effect.

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

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ 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)¹⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 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-2019-04 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-2019-04. 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.

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-2019-04, 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.¹¹

Eduardo A. Aleman
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).