

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85961; File No. SR-NYSE-2019-30)

May 29, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Listing Fee Schedule for Pre-Revenue Companies

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 May 16, 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 adopt a listing fee schedule specific to companies that have not generated any significant revenues at the time of their original listing. 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 it received on the proposed rule change. The text of those statements may be examined at the places

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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.

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's Global Market Capitalization Test (as set forth in Section 102.01C of the Exchange's Listed Company Manual (the "Manual")) allows the Exchange to list companies that have not yet recorded any significant revenues, provided the issuer has at least a \$200 million global market capitalization and meets the other requirements for listing. These companies are typically engaged in research and development (in many cases they are biotechnology companies focused on developing new drug candidates) or are in the early stages of commercialization of a product. Generally, a company of this kind relies primarily on the proceeds from its initial public offering to fund its operations. As such, the fees charged by the Exchange represent a more significant expense for these companies than they do for other newly-listed companies and in many cases these fees are an impediment to the Exchange in competing for the listing of these companies.

To address the issues described above, the Exchange proposes to amend Section 902.02 of the Manual to adopt a discounted annual fee schedule for newly-listed companies that list on or after June 1, 2019 and have not recorded in excess of \$5 million of revenue in either (i) the most recent completed fiscal year prior to listing or (ii) during the year of listing through the most recently completed fiscal quarter before the listing date ("Pre-Revenue Companies").<sup>4</sup> The Annual Fees of any company that qualifies as a Pre-Revenue Company at the time of listing will

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<sup>4</sup> The Exchange will rely on a company's revenues as reported in its SEC filings for purposes of determining whether it qualifies as a Pre-Revenue Company.

be calculated quarterly for the fiscal quarter in which it lists and in each of the succeeding 12 full fiscal quarters, at a rate of one-fourth of the applicable Annual Fee rate. In addition, the total fees (including Listing Fees and Annual Fees, but excluding Listing Fees paid at the time of initial listing) that may be billed to such an issuer during this period will be subject to a \$25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. This fee cap is subject to the same exclusions as apply in relation to the \$500,000 per year fee cap described under "Total Maximum Fee Payable in a Calendar Year." If there are one or more fiscal quarters remaining in the calendar year after the conclusion of the period described in this paragraph, the issuer will, on a prorated basis, be billed the regular Annual Fee subject to the \$500,000 total fee cap for the remainder of that calendar year.

The Exchange believes the proposed fee schedule for Pre-Revenue Companies is reasonable, as paying the Exchange's fees is more burdensome for these early stage companies than it is for companies that generate significant revenues from operations. The Exchange believes that it is reasonable to apply the reduced fee level for a limited period, as Pre-Revenue Companies typically begin to generate significant revenues from operations within three years from the time of initial listing.

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.

## 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

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

<sup>6</sup> 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,<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 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 separate fee schedule for Pre-Revenue Companies, as those companies have limited resources and the Exchange's fees are more burdensome for them than they are for companies that are generating significant revenues from operations.

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.

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<sup>7</sup> 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)<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 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-2019-30 on the subject line.

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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).

<sup>10</sup> 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-2019-30. 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, D.C. 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-2019-30 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  
Deputy Secretary

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