

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90893; File No. SR-NYSE-2020-94)

January 11, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change to Amend Section 907.00 of the Manual to Extend the Period of Time for the Entitlement of Certain Eligible Issuers to Receive Complimentary Products and Services Under that Rule

I. Introduction

On November 6, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 907.00 of the NYSE Listed Company Manual (“Manual”) to extend the period of time for certain eligible issuers to be entitled to receive complimentary products and services under the rule. The proposed rule change was published in the Federal Register on November 27, 2020.² The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

As set forth in Section 907.00 of the Manual, the Exchange offers certain complimentary products and services and access to discounted third-party products and services through the NYSE Market Access Center to currently and newly listed issuers, as described on the Exchange's website. In addition, the Exchange provides all listed issuers with complimentary access to whistleblower hotline services (with a commercial value of approximately \$4,000

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 90466 (November 20, 2020), 85 FR 76129 (“Notice”).

annually) for a period of 24 calendar months.³ The Exchange also provides additional complimentary products and services to certain categories of currently and newly listed issuers, which complimentary services include market surveillance products and services (with a commercial value of approximately \$55,000 annually), web-hosting products and services (with a commercial value of approximately \$16,000 annually), web-casting services (with a commercial value of approximately \$6,500 annually), market analytics products and services (with a commercial value of approximately \$30,000 annually), and news distribution products and services (with a commercial value of approximately \$20,000 annually).⁴

Section 907.00 of the Manual currently provides that the Exchange will offer complimentary products and services to Eligible New Listings⁵ and Eligible Transfer Companies⁶ based on two tiers as follows:⁷ (i) for Eligible New Listings and Eligible Transfer Companies with a global market value of \$400 million or more, in each case calculated as of the

³ See Section 907.00 of the Manual.

⁴ See id.

⁵ For the purposes of Section 907.00, the term “Eligible New Listing” means (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering and (ii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).

⁶ For purposes of Section 907.00, the term “Eligible Transfer Company” means any U.S. or non-U.S. company that transfers its listing of common stock or equity securities, respectively, to the Exchange from another national securities exchange. For purposes of Section 907.00, an “equity security” means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depositary Receipts, or Global Depositary Receipts.

⁷ Section 907.00 of the Manual provides for separate service entitlements for acquisition companies listed under Section 102.06 and the issuers of Equity Investment Tracking Stocks listed under Section 102.07. See Notice, *supra* note 2, at 76129, n.6.

date of listing on the Exchange,⁸ the Exchange offers market surveillance, market analytics, web-hosting, webcasting, and news distribution products and services for a period of 24 calendar months (“Tier A”); and (ii) for Eligible New Listings and Eligible Transfer Companies with a global market value of less than \$400 million, in each case calculated as of the date of listing on the Exchange, the Exchange offers web-hosting, market analytics, web-casting, and news distribution products and services for a period of 24 calendar months (“Tier B”).⁹ NYSE states that the products and services offered to Eligible New Listings and Eligible Transfer Companies under Section 907.00 of the Manual as part of the complimentary offering that is limited to those categories of issuers are, and under the proposal will continue to be, provided solely by third-party vendors.

The Exchange proposes to amend Section 907.00 of the Manual to extend the period for which Eligible New Listings and Eligible Transfer Companies that list on or after the date of Commission approval of the proposal¹⁰ are eligible to receive complimentary products and

⁸ Global market value for an Eligible New Listing and Eligible Transfer Company is based on the public offering price; if there is no public offering in connection with listing on the Exchange, then the Exchange shall determine the issuer’s global market value at the time of listing for purposes of determining whether the issuer qualifies for Tier A or B. See Section 907.00 of the Manual.

⁹ See Section 907.00 of the Manual. The Exchange offers to certain companies currently listed on the Exchange (“Eligible Current Listings”) a suite of complimentary products and services that vary depending on the number of shares of common stock (for U.S. issuers) or other equity security (for non-U.S. issuers) that a company has issued and outstanding. At the conclusion of the 24-month period, Eligible New Listings and Eligible Transfer Companies would be eligible to receive products and services offered to Eligible Current Listings if they qualify under Section 907.00 of the Manual. See id.

¹⁰ The Exchange stated that the proposed amendment would be applicable to Eligible New Listings and Eligible Transfer Companies that list on or after the date of Commission approval of the proposal. See Notice, supra note 2, at 76129. NYSE has stated that it will file a rule proposal to clarify in Section 907.00 of the Manual that listed companies that began receiving complimentary products and services as Eligible New Listings and Eligible Transfer Companies under the rule in effect prior to approval of this proposal

services from 24 calendar months to 48 calendar months for both Tier A and Tier B issuers.¹¹

The complimentary products and services offered to Eligible New Listings and Eligible Transfer Companies for 48 calendar months under the proposal will remain the same products and services as those currently provided to such companies pursuant to Section 907.00 of the Manual, as described above. At the conclusion of the 48-month period, Eligible New Listings and Eligible Transfer Companies would continue to be eligible to receive products and services offered to Eligible Current Listings if they qualify under Section 907.00 of the Manual.¹²

The Exchange also proposes to remove two obsolete provisions of Section 907.00 of the Manual that relate to entitlements that no longer exist because the periods of time for which they were effective have ended.¹³

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.¹⁴ Specifically, the Commission

will receive such complimentary products and services only for 24 months from the date of listing, as set forth under the prior rule.

¹¹ Eligible New Listings and Eligible Transfer Companies will continue to be entitled to complimentary whistleblower services for 24 months, as all listed companies currently receive under Section 907.00 of the Manual. See Notice, supra note 2, at 76129, n.7. See also Section 907.00 of the Manual.

¹² See proposed Section 907.00 of the Manual. See also supra note 9.

¹³ Specifically, the Exchange proposes to remove the following text from Section 907.00: "In addition, Eligible New Listings in both Tier A and Tier B that list before April 1, 2018 are eligible to receive complimentary corporate governance tools (with a commercial value of approximately \$50,000 annually) for a period of 24 calendar months. Companies that list on or after April 1, 2018 will not be eligible to receive any corporate governance tools."

¹⁴ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

believes it is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,¹⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act¹⁶ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the Exchange is responding to competitive pressures in the market for listings in making this proposal.¹⁷ The Exchange represents that the market for new listings and for the retention and transfer of listed companies is intensely competitive and the Commission understands that the Exchange competes, in part, by offering complimentary services to companies.¹⁸ The Exchange states that the purpose of this proposal is to attract future new listings and transfers and, according to the Exchange, extending the time period that products and services are available to Eligible New Listings and Eligible Transfer Companies will help the Exchange to compete for new listings and transfers from other exchanges.¹⁹ In addition, as noted by the Exchange, the Nasdaq Stock Market, Inc.

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ See Securities Exchange Act Release No. 65127 (Aug. 12, 2011), 76 FR 51449 (Aug. 18, 2011) (SR-NYSE-2011-20) ("2011 Approval Order"). As stated above, the products and services offered to Eligible New Listings and Eligible Transfer Companies discussed herein are provided by third-party vendors. In its proposal, the Exchange stated that issuers are not forced or required to use the complimentary products and services and some issuers have selected competing products and services. See Notice, supra note 2, at 76130.

¹⁸ See Notice, supra note 2, at 76129-30.

¹⁹ See Notice, supra note 2, at 76129-30.

(“Nasdaq”) currently provides four years of complimentary services to companies transferring from NYSE to the Nasdaq Global Market that have a market capitalization of at least \$750 million.²⁰ Accordingly, the Commission believes that it is reasonable and consistent with Sections 6(b)(4)²¹ and 6(b)(5) of the Act²² for the Exchange to extend the time period that it offers complimentary products and services to Eligible New Listings and Eligible Transfer Companies that list on or after the date of Commission approval of the proposal from 24 calendar months to 48 calendar months. In addition, the Commission believes that the proposal reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.²³

The Commission has previously found that the package of complimentary services offered to Eligible New Listings and Eligible Transfer Companies is equitably allocated among issuers consistent with Section 6(b)(4) of the Act.²⁴ The Commission notes that all listed companies will continue to receive some level of free services and that, within each tier, all issuers will continue to receive the exact same package of services, for the same period of time. Given that under the proposal Eligible New Listings and Eligible Transfer Companies within each tier will continue to receive the same complimentary products and services for the same period of time, the Commission continues to believe that the package of complimentary

²⁰ See Nasdaq Marketplace Rule IM-5900-7.

²¹ 15 U.S.C. 78f(b)(4).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78f(b)(8).

²⁴ See 2011 Approval Order, *supra* note 17, 76 FR at 51452. See also Exchange Act Release No. 76127 (Oct. 9, 2015), 80 FR 62584, 62587 (Oct. 15, 2015) (SR-NYSE-2015-36) (“2015 Approval Order”).

services is equitably allocated among issuers consistent with Section 6(b)(4) of the Act²⁵ and the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.²⁶

The Commission believes that describing in the Exchange's rules the products and services available to listed companies, their associated values, and the length of time for which issuers are entitled to receive such services adds greater transparency to the Exchange's rules and to the fees applicable to listed companies and will ensure that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which would raise unfair discrimination issues under the Act.²⁷ The Commission also believes that it is reasonable, and in fact required by Section 19(b) of the Act, that the Exchange amend its rules to update the products and services it offers to Eligible Current Listings, Eligible Transfer Companies, and Eligible New Listings, including the time periods for which such products and services are offered and the commercial value of such products and services. This provides greater transparency to the Exchange's rules and the fees, and the value of free products and services, applicable to listed companies. Based on the foregoing, the Commission believes that the Exchange has provided a sufficient basis for offering Eligible New Listings and Eligible Transfer Companies complimentary products and services for a period of 48 calendar months, and that this change does not unfairly discriminate among issuers and is consistent with the Act.

²⁵ 15 U.S.C. 78f(b)(4).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See 2015 Approval Order, supra note 24, 80 FR at 62587. The Commission notes that the Exchange also stated that no other company will be required to pay higher fees as a result of the proposal and that providing the proposed services will have no impact on the resources available for its regulatory programs. See Notice, supra note 2, at 76130.

Finally, the Commission believes it is consistent with the Act for the Exchange to remove obsolete provisions of rule text in order to provide greater transparency to the Exchange's rules and fees and to avoid confusion.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NYSE-2020-94) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier
Assistant Secretary

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).