

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91012; File No. SR-NYSE-2021-06)

January 29, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 902.02 and 902.11 of the NYSE Listed Company Manual to Defer the Billing of Initial Listing Fees Payable by Acquisition Companies

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 21, 2021, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 Sections 902.02 and 902.11 of the NYSE Listed Company Manual (the “Manual”) to defer the billing of initial listing fees payable by Acquisition Companies. The text of the. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 102.06 sets forth listing requirements applicable to any company with a business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period (“Acquisition Company”). Section 902.11 provides that an Acquisition Company is subject to a flat initial listing fee of \$85,000 at the time of initial listing. Based on experience listing these companies, the Exchange proposes to defer the billing and payment of initial listing fees until one year from the date of an Acquisition Company’s initial listing on the Exchange. For the avoidance of doubt, such fee is owed to the Exchange at the time of initial listing based on the fee schedule in effect on the date of listing but will be billed by the Exchange and become payable on the first anniversary of the date of listing. The Exchange notes that the Nasdaq Stock Market (“Nasdaq”) is the Exchange’s primary competitor in the market for the listing of Acquisition Companies and that Nasdaq has a deferral provision comparable to the deferral the Exchange proposes.⁴

Acquisition Companies are formed to raise capital in an initial public offering (“IPO”) with the purpose of using the proceeds to acquire one or more unspecified businesses or assets to be identified after the IPO. However, unlike other types of listed companies that have pre-

⁴ See Securities Exchange Act Release No. 89403 (July 31, 2020 [sic]), 85 FR 46198 (July 31, 2020 [sic]) (SR-NASDAQ-2020-038).

existing operations or that fund their operations by proceeds raised from the IPO, following the IPO, an Acquisition Company funds a trust account with an amount typically equal to 100% of the gross proceeds of the IPO.⁵ As such, operating expenses are typically borne by the Acquisition Company's sponsor, particularly during the initial post-IPO period. The Acquisition Company's sponsor is the entity or management team that forms the Acquisition Company and, typically, runs the operations of the Acquisition Company until an appropriate target company is identified and the business combination is consummated. The funds in the trust account are typically invested in short-term U.S. government securities or held as cash, earning interest over time. Thus, the unique structure of an Acquisition Company results in the sponsor's extreme fee sensitivity, particularly during the initial post-IPO period before any substantial amount of interest is earned from the trust account. The Exchange believes that the market practice of depositing 100% of the gross proceeds of the IPO in a trust account (rather than the minimum of 90% required by Section 102.06) benefits shareholders and is consistent with investor protection because it assures that shareholders choosing to exercise their right to redeem shares for a pro rata share of the trust account will receive the full IPO price paid, rather than a lesser amount guaranteed by Exchange rules. Accordingly, to encourage this market practice the Exchange believes it is appropriate to defer the payment of the initial listing fee owed by an Acquisition Company listed on the Exchange until the first anniversary of the date of listing. The initial listing fee paid at that time would be based on the fee schedule in effect at the time of initial

⁵ Section 102.06 of the Manual provides that an Acquisition Company could pay operating and other expenses, subject to a limitation that 90% of the gross proceeds of the company's offering must be retained in the trust account. However, the Exchange understands that marketplace demands typically dictate that 100% of the gross proceeds from the IPO be kept in the trust account and that only interest earned on that account be used to pay taxes and a limited amount of operating expenses.

listing.

The Exchange believes that the proposed fee deferral would provide an incentive to sponsors to list Acquisition Companies on the Exchange. The Exchange also believes it is reasonable to balance its need to remain competitive with other listing venues, while at the same time ensuring adequate revenue to meet its regulatory responsibilities. The Exchange notes that the fee deferral will not cause any reduction to the Exchange's revenue and no other company will be required to pay higher fees as a result of the proposed amendments and represents that the proposed fee deferral will have no impact on the resources available for its regulatory programs.

The Exchange proposes to amend Section 902.02 to make it clear that the statement in that section that initial listing fees are payable at the time of listing will not be applicable to Acquisition Companies.

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

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.

As a preliminary matter, the Exchange competes for listings with other national securities exchanges and companies can easily choose to list on, or transfer to, those alternative venues. As a result, the fees the Exchange can charge listed companies are constrained by the fees charged by its competitors and the Exchange cannot charge prices in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

The Exchange believes that the proposed rule change to defer the initial listing fees charged to Acquisition Companies as set forth in Section 902.11 for one year from the date of listing is reasonable and not unfairly discriminatory because it recognizes the unique structure of Acquisition Companies that results in a sponsor's extreme fee sensitivity, particularly during the initial post-IPO period before any substantial amount of interest is earned from the trust account. Unlike other companies, which have pre-existing operations and immediate access to the IPO proceeds, Acquisition Companies are unique because at least 90%, and typically 100%, of the IPO proceeds are held in trust for the shareholders and are not available to fund the Acquisition Company's operations. Acquisition Companies also do not have any prior operations that generate cash that could be used to fund their operations. The Exchange also believes that the proposed fee deferral is reasonable in that it will create a commercial incentive for sponsors to list Acquisition Companies on the Exchange. The Exchange competes for listings, in part, by the level of its listing fees. As Nasdaq has previously adopted a one year deferral of its entry fees for Acquisition Companies, it is reasonable for the Exchange to adopt a comparable deferral to enable it to remain competitive in the market for the listing of Acquisition Companies.

The Exchange also notes that no other company will be required to pay higher fees as a result of the proposed amendments. Therefore, the Exchange believes that allowing an Acquisition Company to pay initial listing fees on a deferred basis is reasonable and not inequitable or unfairly discriminatory.

Finally, the Exchange believes that the proposal to defer such fees is consistent with the investor protection objectives of Section 6(b)(5) of the Act in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically, the amount of revenue deferred by allowing Acquisition Companies to pay initial listing fees one year from the date of listing is not substantial, and the fee deferral may result in more Acquisition Companies listing on the Exchange, thereby increasing the resources available for the Exchange's listing compliance program, which helps assure that listing standards are properly enforced and investors are protected. In addition, the Exchange believes that the market practice of depositing 100% of the gross proceeds of the IPO in a trust account for the benefit of shareholders (rather than the required 90%) benefits those shareholders and is consistent with the investor protection goals of the Act because it helps assure that shareholders exercising their right to redeem their shares for a pro rata share of the trust account will receive the full IPO price paid, rather than a lesser amount guaranteed by NYSE rules.

The Exchange believes that the potential impact on revenue from the initial listing fee deferral, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as

amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to set their fees. The Exchange notes that Nasdaq is its primary competitor for the listing of Acquisition Companies and that Nasdaq has already adopted a deferral of its listing fees comparable to the one the Exchange is proposing. For these reasons, the Exchange does not believe that the proposed rule change will result in any burden on competition for listings.

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 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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 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-2021-06 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-2021-06. 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-2021-06 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

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).