

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95613; No. SR-NYSE-2022-38)

August 26, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.05 of the NYSE Listed Company Manual to Establish a Cap on Listing Fees Billed When a Structured Product is Issued as a Dividend

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 August 22, 2022, 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 Section 902.05 of the NYSE Listed Company Manual (the “Manual”) to establish a cap on listing fees billed when a structured product is issued as a dividend.⁴ 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.

⁴ The Exchange originally filed to amend the Manual on August 16, 2022 (SR-NYSE-2022-33) and withdrew such filing on August 22, 2022.

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 902.05 of the Manual sets forth initial listing fees and annual fees applicable to structured products listed under Section 703.18, the equity criteria set out in Section 703.19, and Section 703.21, and traded on the equity floor of the Exchange. The term "retail debt securities" refers to debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange. Subject to certain limitations set forth in the rule, issuers must pay listing fees for structured products at a per share rate using the following tiered fee structure:

- For an issuance up to and including two million shares, the rate is \$0.01475 per share;
- For an issuance over two million shares and up to and including four million shares, the rate is \$0.0074 per share;
- For an issuance over four million shares and up to and including 300 million shares, the rate is \$0.0035 per share;
- For an issuance over 300 million shares, the rate is \$0.0019 per share.

The Exchange now proposes to adopt a cap on listing fees in relation to structured products issued as a dividend. As proposed, listing fees on structured products issued as a dividend would be capped at \$150,000 per issuance. The Exchange notes that the issuer in such cases is not receiving any cash or other consideration and would therefore not be generating any

funds out of which it could pay the listing fees, as would be the case if it sold the securities. Therefore, the Exchange believes it is reasonable to apply a lower fee cap than is applied when structured products are sold in a capital raising transaction, as is more usually the case. The Exchange notes that the Manual already contains a similar \$150,000 cap on listing fees for shares of common stock issued in connection with a stock split or stock dividend.⁵

The Exchange proposes to remove from Section 902.05 the reference to the fact that the fees set forth in that rule are applicable to securities listed under Section 703.21. Section 703.21 formerly set forth listing standards for the listing of equity-linked debt securities. However, the Exchange has reorganized its rules, so that its listing standards for equity-linked debt securities (now call equity linked notes or “ELNs”) are now set forth in Rule 5.2(j)(2) rather than Section 703.21 and Section 703.21 is reserved.⁶ As such, the reference to Section 703.21 in Section 902.05 is no longer relevant and should be deleted. The Exchange notes that it does not currently have any listed ELNs and that it would have to adopt fees prior to listing any ELNs under Rule 5.2(j)(2). If the Exchange concludes that the appropriate fees for ELNs under Rule 5.2(j)(2) would be different from those provided for structured products under Section 902.05, the filing proposing such fees would set forth the Exchange’s reasons for believing that this difference was not inequitable or unfairly discriminatory.

⁵ See Securities Exchange Act Release No. 52463 (September 16, 2005); 70 FR 55933 (September 23, 2005) (SR-NYSE-2005-35) (notice of the proposal to adopt this approach with respect to stock splits). See also Securities Exchange Act Release No. 52696 (October 28, 2005); 70 FR 66881 (November 3, 2005) (SR-NYSE-2005-35) (approval of the adoption of this approach with respect to stock splits).

⁶ See Securities Exchange Act Release No. 84351 (October 3, 2018); 83 FR 50980 (October 10, 2018) (SR-NYSE-2018-30) (among other things, deleting Section 703.21). See also Securities Exchange Act Release No. 80214 (March 10, 2017); 82 FR 14050 (March 16, 2017) (SR-NYSE-2016-44) (among other things, adopting Rule 5.2(j)(2) for the listing of ELNs; Rule 5.2(j)(2) is substantially the same as the listing standard for ELNs set forth in NYSE Arca Equities Rule 5.2(j)(2)).

The Exchange also proposes to remove from Section 902.05 references to the annual fees that were applicable prior to 2019, as that fee is no longer relevant.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4)⁸ 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,⁹ 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 the proposal to cap listing fees for structure products issued as a dividend at \$150,000 per issuance is equitable and not unfairly discriminatory. The Exchange notes that the issuer in such cases is not receiving any cash or other consideration and would therefore not be generating any funds out of which it could pay the listing fees, as would be the case if it sold the securities. Therefore, the Exchange believes it is reasonable to apply a lower fee cap than is applied when structured products are sold in a capital raising transaction, as is more usually the case. The Exchange notes that the Manual already contains a similar

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

\$150,000 cap on listing fees for shares of common stock issued in connection with a stock split or stock dividend.

The removal from Section 902.05 of the reference to the fact that the fees set forth in that rule are applicable to securities listed under Section 703.21 is not inequitable or unfairly discriminatory, as it reflects the fact that ELNs are now listed under Rule 5.2(j)(2) rather than Section 703.21. As such, the reference to Section 703.21 in Section 902.05 is no longer relevant and should be deleted. The Exchange notes that it does not currently have any listed ELNs and that it would have to adopt fees prior to listing any ELNs under Rule 5.2(j)(2). If the Exchange concludes that the appropriate fees for ELNs under Rule 5.2(j)(2) would be different from those provided for structured products under Section 703.21 [sic], the filing proposing such fees would set forth the Exchange's reasons for believing that this difference was not inequitable or unfairly discriminatory.

The removal of the references to annual fees applied before 2019 has no substantive effect, as that fee is no longer applied by its terms.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee cap will be applicable to all similarly situated issuers on the same basis.

The Exchange does not believe that the proposed fee cap will have any meaningful effect on the competition among issuers listed on the Exchange. The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges

and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable.

Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket 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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ 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)¹² of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 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-2022-38 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-2022-38. 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-2022-38, 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.¹³

J. Matthew DeLesDernier,
Deputy Secretary.

¹³ 17 CFR 200.30-3(a)(12).