

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80433; File No. SR-NYSEMKT-2017-19)

April 11, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain of the Initial and Annual Listing Fee Provisions Included in the NYSE MKT Company Guide

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 March 31, 2017, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 certain of the initial and annual listing fee provisions included in the NYSE MKT Company Guide (the “Company Guide”). The proposed 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain of the initial and annual listing fee provisions included in the Company Guide.

The Exchange proposes to amend Section 140 to provide an exemption from the initial listing fees for any company listing within 36 months of emergence from bankruptcy and that has not had a security listed on a national securities exchange during such period. The Exchange believes that it is reasonable to waive the initial listing fees for an issuer listing within 36 months following emergence from bankruptcy, so long as such issuer has not had a security listed on a national securities exchange during such period, because this will incentivize such issuers to list their security on the Exchange, which will result in increased transparency and liquidity with respect to the issuer's security, thereby benefiting investors. In this regard, the Exchange notes that the issuer, like all other listing applicants, would be required to satisfy the Exchange's listings standards as well as the other governance requirements and standards that the Exchange requires of issuers listed on the Exchange. The Exchange believes that limiting the waiver to 36 months following emergence from bankruptcy is reasonable because, in the Exchange's opinion, it is a period of time that is sufficient for the issuer to proceed with its reorganization and meet the Exchange's qualifications for listing.

The Exchange proposes to amend Section 141 to provide a waiver of annual fees in relation to the first part year of a company's listing if the company is transferring its listing from another national securities exchange. The Exchange notes that companies transferring in mid-

year will already have paid listing fees for that year to the exchange on which they were previously listed and that the double payment the Exchange's prorated annual fee imposes on them imposes a significant financial burden and acts as a disincentive to transferring.

The Exchange does not expect the financial impact of these two proposed amendments to be material in terms of the level of listing fees collected from issuers on the Exchange. Specifically, the Exchange anticipates that only a very limited number of issuers will be qualified and seek to list on the Exchange that are eligible to qualify for the waivers. Accordingly, the Exchange believes that the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that each of the proposed amendments is consistent with Section 6(b) of the Exchange Act,⁴ in general, and furthers the objectives of Sections 6(b)(4)⁵ of the Exchange Act, in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The Exchange also believes that each of the proposed amendments is consistent with Section 6(b)(5) of the Exchange Act, in particular in that each of them 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.

The Exchange believes that it is reasonable to waive the initial listing fees for an issuer

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

within 36 months following emergence from bankruptcy, so long as such issuer has not had a security listed on a national securities exchange during such period, because this will incentivize such issuers to list their security on the Exchange, which will result in increased transparency and liquidity with respect to the issuer's security, thereby benefiting investors. In this regard, the Exchange notes that the issuer, like all other listing applicants, would be required to satisfy the Exchange's listings standards as well as the other governance requirements and standards that the Exchange requires of issuers listed on the Exchange. Accordingly, the Exchange believes that it is in the public's interest, and the interest of the issuer, to provide an opportunity for the increased transparency and liquidity that is attendant with listing on the Exchange and therefore that it is reasonable to waive the Listing Fees for such issuers. The Exchange believes that the number of additional issuers that will qualify for this waiver, as proposed, will be limited. The Exchange also believes that limiting the waiver to 36 months following emergence from bankruptcy is reasonable because, in the Exchange's opinion, it is a period of time that is sufficient for the issuer to proceed with its reorganization and meet the Exchange's qualifications for listing.

The Exchange also believes that it is reasonable to limit the waiver to issuers that have emerged from bankruptcy but have not yet had a security listed on a national securities exchange during such period because, if an issuer has already listed its security post-emergence, it has already exposed itself to the requirements and transparency associated with listing on a national securities exchange, which is what the Exchange is incentivizing by waiving the initial listing fees. The Exchange also believes that this is equitable and not unfairly discriminatory because the goal of the waiver is to incentivize listing, and the transparency and public benefits (e.g., increased liquidity) that is attendant therewith. Accordingly, these goals would already be

achieved for an issuer that has already listed on another national securities exchange post-emergence, and to waive the initial listing fees would therefore be inconsistent with the waiver's purpose.

The Exchange believes that the proposed waiver of the annual fees for the first partial year of listing for a company transferring from another exchange is consistent with Sections 6(b)(4) and 6(b)(5) of the Exchange Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. The Exchange believes that the proposed waiver is not unfairly discriminatory with respect to companies that are already listed or companies that are not transferring from another exchange at the time of initial listing, because it is narrowly designed to address the fact that companies transferring from other markets have already paid annual listing fees at their predecessor market and would otherwise have an unusually large aggregate listing fee burden in their first partial year of listing. The Exchange also expects the effect of the proposed waiver to be small, as it is limited to the first part year of a transfer company's listing and a relatively small number of companies transfer to the Exchange in any year.

Overall, the Exchange believes that instances of these waivers being granted to issuers that apply to list on the Exchange will be relatively rare. Accordingly, the Exchange does not anticipate that it will experience any meaningful diminution in revenue as a result of the proposed waivers and therefore does not believe that the proposed waivers would in any way negatively affect its ability to continue to adequately fund its regulatory program or the services the Exchange provides to issuers.

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

The Exchange does not believe that either of the proposed amendments will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed amendment to Section 140 is designed to encourage companies emerging from bankruptcy to list as soon as possible, providing investors with a transparent and liquid market in which to trade those companies' stocks. The proposed amendment to Section 141 is designed to enable all companies transferring from any other national securities exchange to benefit from a waiver with respect to annual fees for their first partial year of listing to offset the annual fees they will already have paid for that year on their predecessor exchange. The market for listings 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 change imposes 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)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

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)⁸ 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. Please include File Number SR-NYSEMKT-2017-19 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-NYSEMKT-2017-19. 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

⁸ 15 U.S.C. 78s(b)(2)(B).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2017-19, 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.⁹

Eduardo A. Aleman
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).