



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76127; File No. SR-NYSE-2015-36)

October 9, 2015

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, Amending Section 907.00 of the Listed Company Manual (the “Manual”) to (i) Amend the Suite of Complimentary Products and Services that are Offered to Certain Current and Newly Listed Companies, (ii) Update the Value of Complimentary Products and Services Offered to Listed Companies, and (iii) Provide that Complimentary Products and Services Would also be Offered to Companies that Transfer their Listing to the Exchange from Another National Securities Exchange

I. Introduction

On August 11, 2015, 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 listed company manual (“Manual”) to amend the suite of complimentary products and services that are offered to certain current and newly listed companies and update the value of complimentary products and services offered to listed companies. In addition, the proposal would separate companies that transfer their listing to the Exchange from another national securities exchange to a new category and expand the complimentary products and services offered to such transfer companies. The proposed rule change was published for comment in the Federal Register on August 25, 2015.³ No comment letters were received in response to the Notice. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75740 (August 19, 2015), 80 FR 51617 (“Notice”).

II. Description of the Proposed Rule Change

In December 2013, the Exchange adopted a rule to expand the suite of complimentary products and services that it offers to certain current and newly listed companies on the Exchange.⁴ Under this rule, certain companies currently listed on the Exchange (“Eligible Current Listings”) are offered a suite of complimentary products and services that vary depending on the number of shares of common stock or other equity security that a company has outstanding. The Exchange presently offers a suite of complimentary products and services to (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), or carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering) (collectively, “Eligible New Listings”). Currently, companies that transfer their listing to the Exchange are offered complimentary products and services on the same terms as Eligible Current Listings.

The Exchange proposes to amend Section 907.00 of the Manual to (i) amend the suite of complimentary products and services that are offered to Eligible Current Listings and Eligible New Listings, (ii) update the value of complimentary products and services offered to such companies, and (iii) provide that 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 (“Eligible Transfer Companies”) would be eligible to receive an enhanced package of

⁴ See Securities Exchange Act Release No. 70971 (Dec. 3, 2013), 78 FR 73905 (Dec. 9, 2013) (SR-NYSE-2013-68) (“December 2013 Approval Order”).

complimentary products and services comparable to the package offered to Eligible New Listings, with the exception of corporate governance tools.⁵

The Exchange proposes to update the approximate commercial value of the following offerings to Eligible Current Listings, Eligible New Listings, and Eligible Transfer Companies: market surveillance products and services from \$45,000 to \$55,000 per annum, corporate governance tools from \$20,000 to \$50,000 per annum, web-hosting products and services from a range of \$12,000-16,000 to \$16,000 per annum, market analytics products and services from \$20,000 to \$30,000 per annum, and news distribution products and services from \$10,000 to \$20,000 per annum. The Exchange also proposes to include web-casting services (with a commercial value of approximately \$6,500 annually) as a separate category of complimentary products and services offered to certain issuers.⁶ In addition, the Exchange proposes to add whistleblower hotline services (with a commercial value of approximately \$4,000 annually) to the list of services that it offers to all listed companies for a period of 24 months. The whistleblower hotline services will replace data room services and virtual investor relation tools (with a commercial value of \$15,000-\$20,000) as complimentary products offered to all listed issuers.

Currently, all listed issuers receive some complimentary products and services through NYSE Market Access Center. The Exchange also offers Eligible Current Listings a suite of products and services, varying based on the number of shares such companies have issued and outstanding. Eligible Current Listings that have at least 270 million shares issued and

⁵ Eligible transfers currently receive complimentary products and services, if eligible, under the “currently listed issuers” category.

⁶ The web-hosting product offered by the Exchange provides eligible issuers with a website containing business content that can be viewed by investors. Web-casting services enable companies to host interactive web-casts to communicate with investors. Eligible companies will receive four interactive web-casts each year.

outstanding (“Tier One Eligible Current Listing”) are presently offered (i) a choice of market surveillance, corporate governance tools and advisory services or market analytics products and services and (ii) web-hosting products and services, on a complimentary basis. Eligible Current Listings that have between 160 million and up to 270 million shares issued and outstanding (“Tier Two Eligible Current Listing”) are presently offered a choice of market analytics, corporate governance tools, or web-hosting products and services. The Exchange proposes to amend Section 907.00 to delete corporate governance tools and advisory services from the suite of products offered to a Tier One Eligible Current Listing and corporate governance tools from the suite of products offered to a Tier Two Eligible Current Listing. In both cases, the proposed rule replaces the deleted service with web-casting products and services.

The Exchange currently offers Eligible New Listings different products and services based on such companies’ global market value. Eligible New Listings with a global market value of \$400 million or more (each a “Tier A Eligible New Listing”) are presently offered web-hosting and news distribution products and services for a period of 24 months and either (i) market surveillance products and services for a period of 12 calendar months from the date of listing or (ii) a choice of market analytics products and services or corporate governance tools for a period of 24 calendar months from the date of listing. Eligible New Listings with a global market value of less than \$400 million (each a “Tier B Eligible New Listing”) are presently offered web-hosting and news distribution products and services for a period of 24 months from the date of listing. The Exchange proposes to amend Section 907.00 to offer 24 months each of market analytics, market surveillance products, web-hosting, web-casting, corporate governance tools, and news distribution products and services to Tier A Eligible New Listings. Accordingly, the Exchange proposes to delete text from Section 907.00 that discusses providing market

surveillance products and services for only 12 months, as well as the option for continuing such services at the end of the initial 12 month period. The proposed rule further amends Section 907.00 to offer 24 months of web-casting, market analytics, and corporate governance tools to Tier B Eligible New Listings, in addition to the currently-offered web-hosting and news distribution products.

Pursuant to the proposed rule change, Eligible Transfer Companies would be offered a package of complimentary products and services that are similar to Eligible New Listings, with one exception.⁷ The one difference between the packages is that the Exchange will not offer corporate governance tools to Eligible Transfer Companies, while Eligible New Listings will receive this service.

Regarding the timing of complimentary products and services, the proposed rule amends Section 907.00 to specify that if an Eligible New Listing or Eligible Transfer Company begins using a particular service within 30 days after the date of listing, the complimentary period begins on such date of first use. In all other instances, the complimentary period begins on the listing date.

In addition to the foregoing, the Exchange proposes making several changes to its rule to

⁷ As noted above, the Exchange proposes to offer Eligible Transfer Companies a package of complimentary products and services comparable to the package that it offers to Eligible New Listings. Therefore, the Exchange proposes to utilize the same metric, *i.e.*, global market value, to determine eligibility for each designation so as to avoid confusion. Currently, transfer companies may receive complimentary products and services if they qualify to be designated as an Eligible Current Listing, such designation being based on the number of outstanding shares of a company's equity securities. Under the proposed rule change, Eligible Transfer Companies with a global market value of \$400 million or more will be eligible to receive a suite of complimentary products and services valued at \$127,500 per year for two years and Eligible Transfer Companies with a global market value of less than \$400 million will be eligible to receive a suite of complimentary products and services valued at \$72,500 per year for two years.

reflect a change in terminology. The proposed rule change amends Section 907.00 to change the terms “newly listed issuer” and “currently listed issuers” to “Eligible New Listing” and “Eligible Current Listings,” respectively. The Exchange also proposes to amend Section 907.00 to include a definition of Eligible Transfer Companies.⁸ Accordingly, since Eligible Transfer Companies would be a separate category of issuer under the proposed rule, the Exchange stated in its filing that it does not believe there could be any inference that a transfer company would be included in the definition of an Eligible New Listing. Therefore, the Exchange proposes to delete the exception for companies that are transferring their listing from another national securities exchange from the current definition of newly listed issuers, which would be renamed Eligible New Listing under the proposed rule.

The Exchange also proposes to amend the first paragraph of Section 907.00 of the Manual to specify that it will offer certain complimentary products and services, and access to discounted third-party products and services through the NYSE Market Access Center to both currently and newly listed issuers, whereas previously it stated such services were only offered to currently listed issuers.

While the Exchange will implement the proposed rule upon approval, any Eligible New Listing that listed on the Exchange prior to approval of the proposed rule will continue to receive services under the terms of the current rule. Therefore, for as long as any Eligible New Listing is receiving services under the terms of Section 907.00 of the Manual as currently in effect, the Exchange will maintain a link to such section in the Introductory Note to Section 907.00.

With respect to Eligible Current Listings, to the extent that the Exchange has already paid

⁸ For purposes of this 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.

a third-party provider (prior to approval) for corporate governance services to an Eligible Current Listing, such complimentary service will continue until the payments run out. Once any pre-approval payments run out, such services will be discontinued. The Exchange expects all corporate governance services to Eligible Current Listings to be completely discontinued no later than early 2016.

The specific products and services offered by the Exchange will be developed by the Exchange or by third-party vendors. In its filing, the Exchange represented that NYSE Governance Services⁹ will offer and develop the corporate governance tools, but will not provide any other service related to the proposed rule. NYSE Governance Services is an entity that is owned by the Exchange's parent company that provides corporate governance, risk and compliance services to its clients, including companies listed on the Exchange. According to the Exchange, companies that are offered these products are under no obligation to accept them and a company's listing on the Exchange is not conditioned upon acceptance of any product or service. Moreover, the Exchange represents that, from time to time, companies elect to purchase products and services from other vendors at their own expense rather than accepting comparable products and services offered by the Exchange.

⁹ In its filing, NYSE stated its belief that NYSE Governance Services is not a "facility" of the Exchange as defined in 15 U.S.C. 78c(a)(2), and noted that its proposed rule change is being filed with the Commission under Section 19(b)(2) of the Act because it relates to services offered in connection with a listing on the Exchange. See Notice *supra* note 3. The Commission notes that the definition of a "facility" of an exchange is broad under the Act, and "includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange . . . and any right of the exchange to the use of any property or service." The Commission further notes that any determination as to whether a service or other product is a facility of an exchange requires an analysis of the particular facts and circumstances.

III. Discussion and Commission 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.¹⁰ Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)¹¹ and (5) of the Act¹² in particular, in that the proposed rule 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 6(b)(8) of the Act¹³ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

As described above, the Exchange proposes to alter the complimentary products and services it offers companies. Specifically, the Exchange proposes to (i) remove corporate governance tools and advisory services for Tier One companies, (ii) remove corporate governance tools for Tier Two companies, (iii) expand the services provided to Tier A Eligible New Listings to include all of the services listed, as described above, for a period of 24 months, not just provide a choice of services, (iv) expand the services provided to Tier B Eligible New Listings to include market analytics and corporate governance tools, (v) offer Eligible Transfer Companies the same products and services offered to Eligible New Listings, except for corporate

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ 15 U.S.C. 78f(b)(8).

governance tools,¹⁴ (vi) provide web-casting to Tier One, Tier Two, Tier A, and Tier B companies, and (vii) replace data room services and virtual investor relation tools available to all issuers annually with a whistleblower hotline for a period of 24 months.

The Commission believes that it is consistent with the Act for the Exchange to revise the products and services it offers to companies. The Exchange has represented that the corporate governance services are not as helpful to more established companies as they are to newly listed companies and that web-casting may be more useful to them.¹⁵ According to the Exchange, the corporate governance products currently offered to Eligible Current Listings are in low demand. The Exchange believes replacing such offerings with web-casting would be more beneficial to listed companies who utilize this service in connection with quarterly earnings releases. The Commission believes that, based on NYSE's representations, replacing a little-utilized service by companies already listed with one that could help companies communicate better with shareholders is reasonable and consistent with Section 6(b)(5) of the Act.

In addition, the Exchange believes that it is appropriate to expand the suite of complimentary products and services it offers to Tier A and Tier B Eligible New Listings, because such companies are listing on the Exchange for the first time and frequently have greater needs with respect to developing their corporate governance and shareholder outreach capabilities.¹⁶ Moreover, the Exchange has represented that it faces competition in the market

¹⁴ Because the Exchange is proposing to offer Eligible Transfer Companies a package of complimentary benefits similar to the benefits offered to Eligible New Listings, the Exchange also proposes using the same metric, i.e., global market value, to determine eligibility for certain products and services.

¹⁵ See Notice, supra note 3.

¹⁶ See id.

for listing services.¹⁷ As part of this competition, the Exchange seeks to entice Nasdaq-listed companies to transfer their listing to the Exchange. The Exchange competes in part by improving the quality of the services that it offers to listed companies. NYSE believes that offering transfers from Nasdaq a similar package to that currently offered to NYSE listed companies transferring to Nasdaq, as well as new listings on Nasdaq, should enhance its ability to compete for listings. According to the Exchange, by offering products and services on a complimentary basis and ensuring that it is offering the services most valued by its listed issuers, it improves the quality of the services that listed companies receive.¹⁸ Accordingly, the Commission believes that the proposed rule 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.¹⁹ Further, by extending the provision of certain complementary services (as listed above) to Tier A and Tier B Eligible New Listings to 24 months and by entitling Eligible Transfer Companies to receive these products and services, other than corporate governance tools, on similar terms as Eligible New Listings, the proposed change enables the Exchange to better compete for new listings.

Moreover, the Commission believes that it is appropriate for the Exchange to offer varying services to different categories of issuers. The Commission has previously found that the tiers originally established under the corporate products and services rule was consistent with the Act.²⁰ The Commission further found that the changes approved in the December 2013

¹⁷ See id.

¹⁸ See id.

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ See Securities Exchange Act Release No. 65127 (Aug. 12, 2011), 76 FR 51449 (Aug. 18, 2011) (SR-NYSE-2011-20) (“Approval Order”). In particular, the Approval Order states that while not all issuers receive the same level of services, NYSE has stated that trading

Approval Order expanding the complimentary products and services offered to some tiers but not others was also justified, in part, based on the different-sized companies within each tier and the amount of services they needed.²¹ According to the Exchange, the current proposal to expand the products and services available to Tier A and Tier B Eligible New Listings should ease the transition of companies becoming public for the first time.²² In addition, as stated by the Exchange, it competes with Nasdaq for listings and further, that Nasdaq offers similar products and services to new listings, including transfers.²³

As noted above, under the proposal, while newly listed companies and transfers will receive similar services there is one exception involving corporate governance tools (valued at \$50,000) which newly listed companies will receive but not transfers. NYSE argues that this approach is consistent with the changes being proposed for currently listed companies in that in the Exchange's experience these tools are not as useful for already established companies and as a result are in low demand by such listed companies. Based on these representations, the Commission does not believe that the exception for transfers violates the unfair discrimination standard under Section 6(b)(5) of the Act and appears to provide equal treatment among established companies, whether currently listed or transferring. The Commission notes that all listed companies will continue to receive some level of free services, including the addition of the whistleblower hotline services being approved in this order. The Commission also notes that

volume and market activity are related to the level of services that the listed companies would use in the absence of complimentary arrangements. The Commission found, among other things, that "...the products and services and their commercial value are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, and the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act." See Approval Order, 76 FR at 51452.

²¹ See December 2013 Approval Order, supra note 4.

²² See Notice, supra note 3.

²³ See id.

within each tier all issuers receive the exact same package of services. The approval of this proposal, including the updated dollar values and specific services provided within each tier, will therefore help to ensure that individual listed companies are not given specially negotiated packages of products and services to list or remain listed which would raise unfair discrimination issues under the Act. The Commission also believes that it is reasonable, and in fact required by Section 19(b) of the Act, that the Exchange amend its rule to update the commercial values of the products it offers to Eligible Current Listings, Eligible Transfer Companies, and Eligible New Listings.²⁴ This provides greater transparency to Exchange's rules and the fees, and the value of free products and services, applicable to listed companies.

The Commission also believes that it is consistent with the Act for the Exchange to allow the complimentary period for a particular service offered to Eligible New Listings and Eligible Transfer Companies to begin on the date of first use if a company begins to use the service within 30 days after the date of listing. According to the Exchange, companies listing on the Exchange for the first time often require a period of time after listing to complete the contracting and training process with vendors providing the complimentary products and services.²⁵ Therefore, many companies are not able to begin using the suite of products offered to them immediately on the date of listing.²⁶ The Commission notes that this proposed change is substantially similar to Nasdaq Rule IM-5900-7, which also allows a company to begin using

²⁴ We would expect the Exchange, consistent with Section 19(b) of the Act, to periodically update the value of products and services offered should they change. This would help to provide transparency to listed companies on the value of the free services they receive and the actual costs associated with listing on the Exchange.

²⁵ See Notice, supra note 3.

²⁶ See id.

services within 30 days of listing.²⁷ As noted in the Nasdaq Order, the Commission believes that this change would provide only a short window of additional time to allow companies to finalize their contracts for the complimentary products and services, and that this additional time would only be available to companies that have already determined to list on the Exchange.²⁸

Based on the factors noted above, the Commission continues to believe that NYSE's products and services, and their commercial value, are equitably allocated among issuers, consistent with Section 6(b)(4) of the Act.²⁹ The Commission also continues to believe that the rule does not unfairly discriminate between issuers, consistent with Section 6(b)(5) of the Act.³⁰ Finally, the Commission believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, consistent with Section 6(b)(8) of the Act.³¹

²⁷ See Securities Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (approving Nasdaq- 2014-058) ("Nasdaq Order").

²⁸ The Commission expects the Exchange to track the start (and end) date of each free service.

²⁹ 15 U.S.C. 78f(b)(4).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78f(b)(8).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change (SR-NYSE-2015-36), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Brent J. Fields
Secretary

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³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).