



8011-01

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-84450; File No. SR-NYSE-2018-50)

October 18, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.02 of the NYSE Listed Company Manual Regarding Information on Listed Securities of a Foreign Private Issuer Obtained From a U.S. or Non-U.S. Securities Depository

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 4, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 902.02 of the NYSE Listed Company Manual (the “Manual”) to enable the Exchange to make use of information obtained from a U.S. [sic] securities depository in determining how many shares of a listed class of securities of a foreign private issuer are issued and outstanding in the United States. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

## 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 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

Sections 902.02 and 902.03 of the Manual provide that the Exchange bills listed foreign private issuers annual and supplemental listing fees only on those shares issued and outstanding in the United States. In order to calculate a foreign private issuer's annual fees, Section 902.02 specifies that the Exchange will calculate a four-quarter average of securities issued and outstanding in the United States during the preceding year.<sup>4</sup> The Exchange obtains information on the number of securities issued and outstanding in the United States, including securities registered in the United States and securities held through any U.S. nominee, from each issuer's transfer agent and/or ADR depositary bank.

In the case of a foreign private issuer whose securities are listed directly on the Exchange (and not in the form of American depositary receipts ("ADRs")), the Exchange relies on the company's home country transfer agent to provide the required information about shares outstanding in the United States. However, in the case of a small number of issuers, it has been

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<sup>4</sup> Section 902.02 states that the purpose of calculating this quarterly average is to recognize the possibility of flow-back and flow-in of securities to and from the home country market and more reasonably reflect the number of securities in the United States over the course of the year.

the Exchange's recent experience that the home country transfer agent has indicated that it is able to provide the number of shares held by registered holders with U.S. addresses but is unable to provide this information with respect to securities held through the U.S. depository<sup>5</sup> or, in some instances, held through a non-U.S. securities depository.<sup>6</sup> Consequently, the Exchange proposes to amend the applicable provision in Section 902.02 to enable it, when necessary, to seek to obtain information about shares held through the U.S. depository or a non-U.S. depository directly from the applicable depository itself. The proposed rule change will provide a transparent methodology for determining an accurate share total for billing purposes in those limited circumstances where the methodology provided under the current rule is unavailable.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4)<sup>8</sup> of the Act, in particular, in that it is 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 the proposed rule change is consistent with Section 6(b)(5) of the Act, in particular in that it is designed to promote just and

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<sup>5</sup> The Depository Trust Company ("DTC") is currently the only securities depository registered with the SEC. The Exchange assumes that all shares held at DTC are issued and outstanding in the United States for purposes of its annual fee billing calculation, with the exception of any shares held at DTC by a foreign depository as nominee for beneficial owners outside the United States.

<sup>6</sup> In the case of certain companies whose securities have trading markets in both the United States and a foreign country, the depository in the applicable foreign country holds shares at DTC as nominee for beneficial owners in the foreign jurisdiction. As the shares in the foreign depository's position at DTC are not issued and outstanding in the United States, the Exchange excludes them from its annual fee billing calculation.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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 proposed rule change provides for an equitable allocation of fees and is reasonable under Section 6(b)(4) in that it is designed to ensure that the Exchange can bill all foreign private issuers in every case on the basis of an accurate calculation of shares issued and outstanding in the United States. The proposal is not unfairly discriminatory under Section 6(b)(5) because the combination of methodologies the Exchange will use will enable it to obtain the same information for all foreign private issuers and bill them all on the same basis and will allow the Exchange to calculate accurately shares issued and outstanding in the United States for billing purposes.

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 that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed amendment does not impose any burden on competition as its purpose is to assist the Exchange in obtaining information it needs to bill listed foreign private issuers according to a preexisting fee schedule.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

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)<sup>11</sup> 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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2018-50 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-2018-50. 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 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. 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-2018-50, 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.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).

