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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87832; File No. SR-NYSE-2019-63]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Annual Listing Fees for Equity Securities, Debt Securities, and Listed Structured Products Traded on NYSE Bonds

December 20, 2019

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 December 13, 2019, 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 certain of its listing fees. 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 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 its listing fees set forth in Chapter 9 of the Manual, in each case with effect from the beginning of the calendar year commencing on January 1, 2020. These amendments only reflect changes in the amounts charged for listed securities and do not reflect any change in the services provided to the issuer in connection with such listing.

Annual Fees for Common Equity Securities.

The annual fee set forth in Section 902.03 of the Manual will increase from \$0.00110 per share to \$0.00113 per share for each of the following: a primary class of common shares (including Equity Investment Tracking Stocks); each additional class of common shares (including tracking stock); a primary class of preferred stock (if no class of common shares is listed); each additional class of preferred stock (whether primary class is common or preferred stock); and each class of warrants. In addition, the minimum annual fee will be increased from \$68,000 to \$71,000 for each of (i) a primary class of common shares (including Equity Investment Tracking Stocks) and (ii) a primary class of preferred stock (if no class of common shares is listed).

The Exchange proposes to make the aforementioned fee increases in Section 902.03 to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to issuers. The Exchange's costs of servicing the listing of an equity security include the resources devoted to the required regulatory oversight, the processing of corporate actions, and the maintenance of the client relationship. Many of these costs have increased due

to inflation and other factors over the period since the current fee levels were adopted. The revised fees will be applied in the same manner to all issuers with listed securities in the affected categories and the changes will not disproportionately affect any specific category of issuers.

Annual Fees for Securities Subject to Section 902.08

The Exchange proposes to amend its annual fees for structured products listed under Section 703.19 and traded on NYSE Bonds and all debt securities listed under Sections 102.03 and 103.05 (excluding non-listed debt of NYSE issuers and affiliate companies and domestic listed debt of issuers exempt from registration under the Exchange Act) (collectively “NYSE Bonds Securities”) with effect in the calendar year starting January 1, 2020. Under the current rule, an issuer must pay a separate annual fee for each listed NYSE Bonds Security at a flat rate of \$25,000 per listed issuance (except that non-NYSE issuers⁴ listing debt securities under Sections 102.03 and 103.05 are charged a \$45,000 annual fee). The proposed annual fee schedule for all NYSE Bonds Securities (including debt of non-NYSE issuers) is as follows:

If the issuer has at least one and no more than five listed NYSE Bonds Securities:

\$25,000

If the issuer has at least six and no more than 10 listed NYSE Bonds Securities: \$50,000

If the issuer has at least 11 and no more than 15 listed NYSE Bonds Securities: \$75,000

If the issuer has more than 15 listed NYSE Bonds Securities: \$100,000

It has been the Exchange’s experience that there are both regulatory and customer service efficiencies in dealing with multiple classes of such securities listed by the same issuer. In light of these facts, the Exchange believes that the proposed tiered approach to annual fees under Section 902.08 better reflects the Exchange’s resource allocation and costs than is the case with

⁴ I.e., companies that do not have their common equity securities listed on the Exchange.

the current fee structure. The revised fee schedule will be applied to all issuers of NYSE Bond Securities in the same manner. The proposed tiering structure will result in issuers that have larger numbers of listed issuances of NYSE Bond Securities paying a lower effective annual fee rate per issuance. The Exchange believes that this fee differential is appropriate in light of the efficiencies described above. While the Exchange recognizes that this will result in a significant reduction in the amount paid per listed security by some issuers, it believes this reduction reasonably reflects the incremental resources devoted to listing additional securities of the same issuer. The tiering approach will also enable the Exchange to respond to a changing and increasingly competitive landscape for the listing of these types of securities.

Initial Listing Fees for Bonds of Non-NYSE Issuers

In addition to adopting the same tiering approach to annual fees for debt of non-NYSE listed companies as for debt of NYSE listed companies, the Exchange also proposes to reduce the initial listing fee for debt of non-NYSE listed companies from \$45,000 to \$25,000, which is the same rate charged to NYSE listed companies. While the Exchange has previously adopted a separate fee schedule for the listing of bonds of non-NYSE issuers on the grounds that it believed the cost of servicing those listings was meaningfully higher, the Exchange has concluded based on its more recent observation that the regulatory and other resources it expends in servicing the listing of a debt issuance of a non-NYSE listed issuer are not actually meaningfully greater at this time than those expended in relation to the listed debt of an NYSE company. The proposed fee reduction will also enable the Exchange to respond to a changing and increasingly competitive landscape for the listing of these types of securities. For the foregoing reasons, the Exchange believes it is appropriate to charge the same initial and annual listing fees for all

NYSE Bond Securities, regardless of whether the issuer's common equity is listed on the Exchange.

Waiver of Initial Listing Fee and Prorated Annual Fee for Transfers

The Exchange proposes to waive initial listing fees and the prorated annual listing fee with respect to the first part year of listing for any NYSE Bonds Security that lists upon transfer 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 initial listing fee and prorated annual fee imposes on them imposes a significant financial burden and acts as a disincentive to transferring. The Exchange also notes that the proposed waivers are consistent with the approach taken by the NYSE itself and the other national securities exchanges with respect to the waiver of fees in connection with the transfer of common equity securities from another national securities exchange.

The Exchange proposes to make a conforming change to Section 902.02 to reflect the fact that the Exchange will provide the proposed waivers set forth above.

The proposed rule change would not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4)⁶ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ 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 Proposed Change is Reasonable

The Exchange operates in a highly competitive marketplace for the listing of both the various categories of equity securities affected by the proposed fee adjustment and the categories of securities listed and traded on NYSE Bonds. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, in the Exchange's view, the small increase to the annual fees for various categories of equity securities represent a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain

⁷ 15 U.S.C. 78f(b)(5).

listings. Similarly, the Exchange believes that the proposed tiering of annual fees for securities listed on NYSE Bonds represents a reasonable attempt to attract and retain listings of those categories of securities, while also representing a reasonable approach in light of the efficiencies associated with listing multiple classes of securities of the same issuer. The Exchange believes that the proposal to charge the same fees with respect to bonds of non-NYSE issuers as are charged for bonds of NYSE companies is reasonable because the cost of servicing those securities is comparable to the cost of servicing similar securities of NYSE listed companies. The Exchange believes that the proposal to waive initial listing fees and the first year's prorated annual fees for NYSE Bonds Securities transferring from another national securities exchange is reasonable because the cost of paying listing fees to both the NYSE and the predecessor exchange imposes a significant financial burden and acts as a disincentive to transferring.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed amendments to the annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the minimum fees and per unit rates by a small amount to reflect increased operating costs. Similarly, as the fee structure remains effectively unchanged apart from small increases in the rates paid by all issuers, in the Exchange's view, the changes to annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer.

The Exchange believes that the proposed amendments to the annual fees for securities listed and traded on NYSE Bonds (and to the initial and annual fees for bonds of non-NYSE

issuers) are equitable because they reflect the similar costs efficiencies experienced by the Exchange in listing multiple securities of similar categories of a single issuer, as well as the similar costs associated with servicing the listing of bonds of non-NYSE issuers to those associated with listed bonds of NYSE listed companies. While issuers with multiple classes of eligible securities will benefit from lower fees, the Exchange believes that there will be no disparate impact on any category of issuers, because the fee paid in connection with the listing of a single class of securities will remain unchanged and no issuer will be required to pay an increased fee rate. The Exchange believes that the waiver of initial listing fees and the prorated annual fee for the first year of listing for securities transferring from another national securities exchange is not inequitable as it expects will be available to a small number of issuers and is being implemented solely to relieve these issuers of the burden of duplicative payments to two exchanges.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory.

The proposed fee changes are not unfairly discriminatory because the same fee schedule will apply to all listed issuers. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue. As discussed above under "Purpose," the Exchange believes that the proposed tiered approach to annual fees under Section 902.08 better reflects the Exchange's resource allocation and costs than is the case with the current fee structure.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services 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 changes impose a burden on competition.

Intramarket Competition.

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition.

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 chosen 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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ 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)¹⁰ 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-63 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-2019-63. 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-2019-63 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).

