

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67846; File No. SR-NYSE-2012-44]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Section 907.00 of the Listed Company Manual, Which Describes Certain Complimentary Products and Services that are Offered to Certain Issuers

September 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 30, 2012, 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 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 907.00 of the Listed Company Manual (the “Manual”), which describes certain complimentary products and services that are offered to certain issuers. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://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 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 Section 907.00 of the Manual, which describes certain complimentary products and services that are offered to certain issuers.

##### Background

Section 907.00 of the Manual sets forth certain complimentary products and services that are offered to certain currently and newly listed issuers. These products and services are developed or delivered by NYSE or by a third party for use by NYSE-listed companies. Some of these products are commercially available from such third-party vendors. All listed issuers receive some complimentary products and services through the NYSE Market Access Center. Certain tiers of currently listed issuers and newly listed issuers receive additional products and services.

##### Expand Definition of Newly Listed Issuer

Under Section 907.00, a newly listed issuer is defined as a U.S. issuer conducting an initial public offering (“IPO”) or an issuer 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 IPO), but does not include an issuer that transfers its listing from another U.S. exchange.<sup>3</sup>

The Exchange proposes to broaden the definition of newly listed issuer to mean any U.S. company listing common stock on the Exchange for the first time, and any non-U.S. company<sup>4</sup> listing an equity security<sup>5</sup> on the Exchange under

<sup>3</sup> See Securities Exchange Act Release No. 65127 (Aug. 12, 2011), 76 FR 51449, 51450 n. 13 (Aug. 18, 2011) (SR-NYSE-2011-20).

<sup>4</sup> For purposes of the Manual, the terms “Foreign Private Issuer” and “non-U.S. company” have the same meaning and are defined in accordance with the Commission’s definition of foreign private issuer set out in Rule 3b-4(c) of the Securities Exchange Act of 1934, as amended (the “Act”). See Section 103.00 of the Manual. Strictly for ease of reference and to use a less technical term, the Exchange proposes to amend the text of Section 907.00 to refer to “non-U.S. companies” rather than “Foreign Private Issuers.” This aspect of the proposed rule change does not result in any substantive change in the entities eligible under Section 907.00.

<sup>5</sup> In some instances, a non-U.S. company may not list its common stock on the Exchange; rather, such company may have its common stock listed on a foreign market and list some other type of security on the Exchange, such as American Depositary

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; the definition would continue to exclude any issuer that transfers its listing from another U.S. securities exchange.<sup>6</sup> Under the proposed rule change, the definition of “newly listed issuer” also would mean 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), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).

##### Changes to Tier One and Tier Two for Currently Listed Issuers

Currently, the Exchange has two tiers of products and services that are available to currently listed issuers. Under Tier One, the Exchange offers market surveillance and Web-hosting products and services to U.S. issuers that have 270 million or more total shares of common stock issued and outstanding in all share classes, including and in addition to Treasury shares, and Foreign Private Issuers that have 270 million or more in ADRs issued and outstanding, each calculated annually as of December 31 of the preceding year. Under Tier Two, at each such issuer’s election, the Exchange offers either market analytics or Web-hosting products and services to U.S. issuers that have 160 million to 269,999,999 total shares of common stock issued and outstanding in all share classes, including and in addition

Receipts (“ADRs”). Thus, to qualify for the products and services under Section 907.00, the Exchange would require the non-U.S. company to list an “equity security” on the Exchange, which would be defined to mean common stock or common share equivalents such as ordinary shares, New York shares (a type of share used by Canadian companies), global shares, ADRs, or Global Depositary Receipts. Each of these types of shares has been used by non-U.S. companies when listing on the Exchange. The definition of “equity security” would be added to Section 907.00. The Exchange proposes to make conforming amendments throughout Section 907.00 to change specific references to ADRs to the broader term “equity security.”

<sup>6</sup> The current text of Section 907.00 states that the definition of “newly listed issuer” excludes an issuer that transfers its listing from another exchange. In a prior filing, the Exchange’s stated that the exclusion applied to transfers from a national securities exchange, *i.e.*, another U.S. securities exchange. See *supra* note 3. For greater clarity, the text of the Section 907.00 would be amended to provide specifically that a transfer from a U.S. securities exchange would be excluded from the definition of newly listed issuers. The Exchange does not believe that such issuers need the services offered to newly listed issuers because they already have been trading in U.S. capital markets. Rather, issuers that transfer from another U.S. exchange may qualify for the products and services offered to currently listed issuers under Section 907.00.

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

<sup>2</sup> 17 CFR 240.19b-4.

to Treasury shares. Tier Two products and services also are offered to Foreign Private Issuers that have 160 million to 269,999,999 in ADRs issued and outstanding, each calculated annually as of December 31 of the preceding year.

The Exchange has determined that using December 31 as the date of qualification is not optimal because it provides issuers with too little notice of their qualification for Tier One or Tier Two. The Exchange has determined that it would be preferable to determine issuers' qualifications as of September 30 of the preceding year. Thus, for example, shortly after September 30, 2012, the Exchange would run the calculations for each issuer and determine which are eligible for Tier One or Tier Two for calendar year 2013, and so notify the qualifying issuers.<sup>7</sup> Qualifying issuers then would have nearly three months to select from the available services in their tier for the following calendar year, and non-qualifying issuers would have additional time to budget and plan for obtaining the services elsewhere should they so wish. The Exchange also proposes that for non-U.S. companies, the measurement of shares of an equity security would mean shares issued and outstanding in the U.S.

With respect to Tier One offerings, the Exchange proposes to permit a Tier One issuer to choose market analytics products and services as an alternative to market surveillance products and services. Some issuers would prefer to receive the former. Web-hosting products and services would continue to be offered to Tier One issuers.

#### Change to Tier A Offering

Tiers A and B describe the products and services available to newly listed issuers. Tier A includes issuers with a global market value of \$400 million or more based on the public offering price. Tier B includes issuers with a global market value of less than \$400 million based on the public offering price.

With one exception, the specified products and services for newly listed issuers are offered for 24 months after listing, at which time the issuers may be eligible for the Tier One or Tier Two products and services offered to existing issuers. The exception is market surveillance products and services, which currently are offered to Tier A issuers for the initial 12 months after listing. Under the current Manual, those issuers would not be eligible to receive

the market surveillance products and services for the next 12 months, until they qualified for Tier One status at the end of the 24-month period following listing. The Exchange proposes to eliminate that 12-month gap by amending Section 907.00 to provide that if, at the end of the 12-month period following a new listing, an issuer that has selected market surveillance products and services meets the qualifications of a Tier One issuer, then such issuer may continue to receive such services for an additional 12 months. This amendment would assure that there is no break in the offering of market surveillance products and services to otherwise qualified issuers.

The Exchange also proposes to amend the text that refers to global market value based on public offering price. As noted above, some listed companies may not conduct a public offering in connection with listing. For example, non-U.S. companies that are already listed on a foreign exchange may not conduct a public offering in connection with listing in the U.S. markets for the first time on the Exchange. The Exchange proposes to add text to Section 907.00 that would provide that if a newly listed issuer does not conduct a public offering, then its global market value will be determined by the Exchange at the time of listing for purposes of determining whether the issuer qualifies for Tier A or B.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges 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<sup>10</sup> in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to offer complimentary products and services to attract new listings, retain currently listed issuers, and respond to competitive pressures. The Exchange faces competition in the market for listing services, and it competes in part by improving the quality of the services that it offers to listed companies. By offering products and services on a complimentary basis

and ensuring that it is offering the services most valued by its listed issuers, NYSE will improve the quality of the services that listed companies receive.

With respect to the change to the definition of newly listed issuer, the Exchange believes that a non-U.S. company that is listing an equity security for the first time on the Exchange, or is emerging from a bankruptcy, spinoff, or carve-out, is similarly situated to a U.S. issuer conducting an IPO or emerging from a bankruptcy, spinoff, or carve-out, and should be eligible to receive the same products and services from the NYSE Market Access Center as those U.S. issuers do. The proposed rule change would result in a more reasonable and equitable allocation of the listing benefits received in return for a non-U.S. company's listing fees<sup>11</sup> and would not be unfairly discriminatory because all similarly situated non-U.S. companies that list an equity security on the Exchange as described above would be eligible (other than transfers from another U.S. securities exchange). The Exchange also believes that amending the text of Section 907.00 to refer to listing on the Exchange for the first time, rather than the specific offerings that may occur in conjunction with the listing would make the coverage of the Section sufficiently broad to account for different types of offerings that may occur in connection with a new listing. The Exchange believes that defining the term "equity security," would make the coverage of the Section sufficiently broad to account for different types of securities. The Exchange believes that the text of Section 907.00 would be more transparent if it is [sic] specifically referenced the exclusion of issuers transferring from another U.S. securities exchange, as had been noted in a prior filing.<sup>12</sup>

With respect to the changes to Tier One, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to allow issuers that qualify under this tier to choose whether they receive market surveillance or market analytics products and services.

With respect to changing the qualification date from December 31 to September 30 of the preceding year, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to provide issuers with greater advance notice of their qualification (or non-qualification) for

<sup>7</sup> The Exchange notes that the proposed rule change may not be in effect prior to September 30, 2012; however, the Exchange believes that there will be sufficient time following approval of the proposed rule change to notify qualifying issuers.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Listing fees for non-U.S. companies are set forth in Section 902.03 of the Manual.

<sup>12</sup> See *supra* note 3.

Tier One and Tier Two services, providing such issuers with additional time to plan and budget accordingly. The Exchange also believes that stating in the text of Section 907.00 that (i) the measurement of shares of an equity security for non-U.S. companies is limited to shares issued and outstanding in the U.S., and (ii) the Exchange will determine global market value for newly listed issuers that do not conduct a public offering in connection with the listing would provide greater clarity in the Exchange's rules, and as such is reasonable.

With respect to the change to Tier A, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to offer market surveillance products and services throughout the 24-month period following listing, rather than just the initial 12 months, in order to eliminate the interruption in service that would otherwise occur for issuers that would qualify for Tier One status as existing issuers at the end of the 24-month period.

The Exchange further notes that the proposed rule change is equitable and not unfairly discriminatory because the criteria for satisfying the tiers are the same for all similarly situated issuers. Issuers are not forced or required to utilize the complimentary products and services as a condition of listing. All issuers will continue to receive some level of free services.

#### *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.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2012-44 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2012-44. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between 10 a.m. and 3 p.m.. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSE-2012-44 and should

be submitted on or before October 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67847; File No. SR-NYSE-2012-43]**

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 902.02 and 902.03 of the Listed Company Manual of the New York Stock Exchange LLC**

September 12, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 30, 2012, 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 Sections 902.02 and 902.03 of the Listed Company Manual (the "Manual") to provide that, where both of the companies that form an umbrella partnership real estate investment trust ("UPREIT") structure are listed on the Exchange, Listing and Annual Fees for the two related listed issuers will be subject to a single fee cap at the time of original listing and on an annual basis. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<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.