

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84294; File No. SR-NYSE-2018-41)

September 27, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 902.04 of the NYSE Listed Company Manual to Apply a \$50,000 Fee Cap Per Transaction for Issuances of Additional Shares by Closed End Funds

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 September 19, 2018, 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 Section 902.04 of the NYSE Listed Company Manual (the “Manual”) to apply a \$50,000 fee cap per transaction for issuances of additional shares by closed end funds. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Under Section 902.04 of the Manual, listing fees on the issuance of additional shares of an already listed class of stock are capped at \$500,000 per transaction.⁴ The Exchange proposes to amend this provision to establish a fee cap of \$50,000 in relation to an issuance of additional shares by a closed end fund.

Under Section 902.02 of the Manual, operating companies benefit from a \$500,000 fee cap per calendar year with respect to the aggregate of all annual fees and fees paid for the issuance of additional shares. Giving effect to the payment of annual fees and any earlier payments of listing fees for additional share issuances during the same calendar year, the annual \$500,000 fee cap may cause an operating company to be subject to a significantly reduced fee obligation in connection with a material share issuance, or even no additional fees at all. By contrast, Section 902.04 does not include an annual cap on fees for closed end funds at the individual fund level.⁵ Therefore, a

⁴ Section 902.04 includes a list of examples of transactions that are subject to this fee cap, including “in the case where shares are issued in conjunction with a merger or consolidation where a listed company survives, subsequent public offerings of a listed security and conversions of convertible securities into a listed security.”

⁵ There is a fund family discount that is exclusively applicable to annual fees. Fund

closed end fund receives no reduction in its fee obligations with respect to a material share issuance as a consequence of its annual fee payments or even the fees paid with respect to other material transactions earlier in the same calendar year. As such, a closed end fund may be charged as much as \$500,000 for a transaction for which it would have been charged far smaller fees if it had been an operating company, if any at all.

It is impossible to specify the fee disparity that would exist between the amount that would be paid by any closed end fund under Section 902.04 as currently in effect and how much it would owe under the operating company fee provisions if they applied, as the differential would be affected by the amount of annual fees the company paid, the number of shares issued and whether individual issuances had their fees capped. Nevertheless, the Exchange believes that a \$50,000 cap per transaction is a reasonable approach. In reaching this conclusion, the Exchange reviewed the fee impact of additional share issuances on operating companies as limited by the \$500,000 annual cap and also examined the likely impact on closed end funds of a \$50,000 per transaction fee cap. Based on this review, the Exchange concluded that a \$50,000 cap per transaction for closed end funds would generally result in a treatment of closed end funds that would be reasonably similar to the treatment of similarly-situated operating companies. As a per

families that list between three and 14 closed end funds receive a 5% discount off the calculated annual fee for each fund listed, and those with 15 or more listed closed end funds receive a discount of 15%. Fund families that list between three and 14 closed end funds receive a 5% discount off the calculated annual fee for each fund listed, those with between 15 and 19 listed closed end funds receive a discount of 15%, and those with 20 or more listed closed end funds receive a discount of 50%. No fund family is required to pay aggregate annual fees in excess of \$1,000,000 in any given year. A fund family consists of closed-end funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

share rate would continue to be applied up to \$50,000 under the proposed amendment, the fees for additional issuances would generally be greater for closed end funds that issued greater numbers of additional shares in the course of a year.

The Exchange does not believe that any reduction in revenue would have an impact on its ability to conduct its regulatory activities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4)⁷ 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 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 the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act in that it represents an equitable allocation of fees and does not unfairly discriminate among listed companies. 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 reasonably address a discrepancy in the fees paid by closed end funds when

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

compared to fees paid by operating companies for similar transactions. The proposal is not unfairly discriminatory under Section 6(b)(5) because all closed end funds will be subject to the same fee schedule for additional share issuances. In addition, as discussed above in the section entitled “Purpose,” the proposal is not unfairly discriminatory because it is reasonably designed to address a significant discrepancy in the fee impact of an issuance of additional shares by a closed end fund when compared to the impact of a similar issuance on an operating company that is otherwise similarly situated.

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 and burden on competition as its purpose is to address an anomaly in how closed end funds are charged for additional share issuances compared to the treatment of operating companies.

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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2018-41 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-2018-41. 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

¹⁰ 15 U.S.C. 78s(b)(2)(B).

<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, D.C. 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-2018-41 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

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).