

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101093; File No. SR-NYSE-2024-57)

September 18, 2024

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 10, 2024, 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, 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 902.02 of the NYSE Listed Company Manual (the “Manual”) to clarify that for purposes of qualifying for the Investment Management Entity Group Fee Discount, an Investment Management Entity is a company that is listed on the Exchange or another national securities exchange. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange presently offers a discount on annual fees to Investment Management Entities and their Eligible Portfolio Companies.³ The discount equals a 50% reduction on all annual fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has one or More Eligible Portfolio Companies. Under Section 902.02 of the Manual, an "Investment Management Entity" is defined as "a listed company that manages private investment vehicles not registered under the Investment Company Act." An "Eligible Portfolio Company" of an Investment Management Entity is defined as "a company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company's initial listing."

The Exchange proposes to amend the definition of Investment Management Entity contained in Section 902.02 to specify that it is a company listed on the Exchange or another national securities exchange that manages private investment vehicles not registered under the Investment Company Act. As amended, the definition would not limit qualification as an Investment Management Entity to only those companies listed on the Exchange. Instead, a company meeting the remaining requirements of the definition could qualify as long as it is listed on the Exchange or another national securities exchange.

³ See Section 902.02 of the Manual.

When the Exchange adopted the Investment Management Entity Group Fee Discount in 2016, it noted that the fee reduction was appropriate because it (i) benefits from its ongoing relationships with Investment Management Entities and (ii) experiences efficiencies when dealing with portfolio companies that are guided by Investment Management Entities. This is, in part, attributable to the fact that Investment Management Companies typically have prior experience with the Exchange and thus the Exchange incurs lower costs in pitching for the listings of their portfolio companies. In addition, because Investment Management Companies generally install experienced management teams at portfolio companies and offer ongoing support after listing, the Exchange's business and Regulation staff generally have to devote fewer resources to servicing these listings.⁴

The Exchange now believes that many of the efficiencies that warranted the fee discount in the first place, are applicable regardless of whether the Investment Management Entity is listed on the Exchange or another national securities exchange. For example, the Exchange and Nasdaq have similar rules for listed companies, including in the area of corporate governance. Therefore, an Investment Management Entity with experience guiding companies to list on Nasdaq is likely to provide similar levels of support to a portfolio company listing on the Exchange. Therefore, the Exchange believes it is appropriate to amend Section 902.02 of the Manual to specify that in order to benefit from the annual fee discount, a qualifying Investment Management Entity can be listed on the Exchange or another national securities exchange.

The Exchange notes that Nasdaq offers a comparable 50% discount on annual fees to investment management entities and eligible portfolio companies and, for purposes of qualifying

⁴ See Securities Exchange Act Release No. 79582 (December 16, 2016), 81 FR 93976 (December 22, 2016) (concerning SR-NYSE-2016-70).

for this discount, Nasdaq rules expressly permit the investment management company to be listed on Nasdaq or another national securities exchange.⁵ The Exchange's proposed amendment, therefore, simply conforms its fee discount to the comparable discount offered by Nasdaq.

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 Section 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. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ 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 Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Section 902.02 of the Manual to clarify that for purposes of qualifying for the Investment Management Entity Group Fee Discount, an Investment Management Entity is a company that is listed on the Exchange or another national securities exchange.

⁵ See Nasdaq Rule 5910(b)(2)(E).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

The Proposed Change is Reasonable

The Exchange believes that the proposed change to its Investment Management Entity fee discount is reasonable. In that regard, the Exchange notes that the efficiencies that warranted the fee discount in the first place, are largely applicable regardless of whether the Investment Management Entity is listed on the Exchange or another national securities exchange. For example, the Exchange and Nasdaq have similar rules for listed companies, including in the area of corporate governance. Therefore, an Investment Management Entity with experience guiding companies to list on Nasdaq is likely to provide similar levels of support to a portfolio company listing on the Exchange. Therefore, the Exchange anticipates that it will experience cost efficiencies from servicing the listing of an Eligible Portfolio Company even when the related Investment Management Entity is listed on another national securities exchange.

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 amendment to the Investment Management Entity fee discount is equitable because it does not change the existing framework for such discount, but instead represents a reasonable extension of the discount. As amended, the proposed rule would state that, for eligibility purposes, an Investment Management Entity can be listed on the Exchange or another national securities exchange. The Exchange believes that the proposed rule change represents an equitable allocation of fees because the Exchange experiences similar cost efficiencies in servicing Eligible Portfolio Companies regardless of whether the related Investment Management Entity is listed on the Exchange or another national securities exchange.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers because, as discussed above, the Exchange experiences cost efficiencies in servicing Eligible Portfolio Companies that it does not experience with other operating companies listed on the Exchange. Therefore, the Exchange believes it is not unfairly discriminatory to provide a fee discount to such companies.

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 believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.⁹

The proposed rule change simply aligns the provisions of the existing fee discount that the Exchange provides to Investment Management Companies and their Eligible Portfolio Companies with the comparable fee discount offered by Nasdaq. As such, the Exchange believes that the proposed rule change will enhance competition for listings by enabling the Exchange and Nasdaq to vie for listings on equivalent terms.

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 has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁰ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing

⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

of the 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-57 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-2024-57. 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 website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-57, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Vanessa A. Countryman,

Secretary.

¹¹ 17 CFR 200.30-3(a)(12).