

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96530; File No. SR-NYSEAMER-2022-56)

December 19, 2022

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Increase Certain Annual Fees Set Forth In Section 141 of the NYSE American Company Guide

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 13, 2022, NYSE American LLC (“NYSE American” 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 141 of the NYSE American Company Guide (the “Company Guide”) to amend its annual fees charged to issuers of listed equity securities. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 its annual fees charged to issuers of listed equity securities as set forth in Section 141 of the Company Guide. The proposed changes will take effect from the beginning of the calendar year commencing on January 1, 2023.

The Exchange currently charges an annual fee of \$50,000 to issuers with 50 million or fewer shares outstanding and an annual fee of \$70,000 to issuers with more than 50 million shares outstanding. The Exchange proposes to increase the annual fee for issuers with 50 million or fewer shares outstanding to \$55,000 [sic], and to increase the annual fee for issuers with more than 50 million shares outstanding to \$75,000.

The proposed increase in the annual fee rates reflects increases in the costs the Exchange incurs in providing services to listed companies on an ongoing basis, as well as increases in the costs of conducting its related regulatory activities. As described below, the Exchange proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to companies.

The revised annual fees will be applied in the same manner to all issuers with listed securities in the affected categories and the Exchange believes that the changes will not disproportionately affect any specific category of issuers.

The Exchange also proposes to remove from Section 141 text referring to fee rates that are no longer applied as this reference is no longer relevant.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4)⁵ 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,⁶ 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 141 to increase the annual fees for listed equity securities as set forth above because of the increased costs incurred by the Exchange since it established the current rates.

The Proposed Changes are Reasonable

The Exchange believes that the proposed changes to its annual fee schedule are reasonable. In that regard, the Exchange notes that its general costs to support its listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies. Specifically, the Exchange has

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).

(among other things) increased expenditure on listed companies and the value of an NYSE American listing by: making improvements to NYSE Connect, an online service that provides listed companies with access to in-depth information to better understand the trading of their securities; and launching the NYSE Institute, whose focus includes providing thought leadership and advocacy on behalf of listed companies. The Exchange notes that companies listed on both the New York Stock Exchange and NYSE American all benefit from the foregoing services.

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities affected by the proposed annual fee adjustments. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS,⁷ the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

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.

⁷ Release No. 34–51808 (June 9, 2005); 70 FR 37496 (June 29, 2005).

⁸ See Regulation NMS, 70 FR at 37499.

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

The Exchange proposes to make the aforementioned fee increases in Section 141 to better reflect the value of such listing to issuers.

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 amount of certain of the fees to reflect increased operating costs. Similarly, as the fee structure remains effectively unchanged apart from increases in the rates paid by all issuers, the changes to annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer of equity securities.

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 of operating company equity securities because the same fee schedule will apply to all such issuers. The Exchange does not propose to increase the minimum annual fees charged for any of the various classes of derivative securities products, closed end funds, bonds, or warrants for which annual fees are also set forth in Section 141. The Exchange believes that this is not unfairly discriminatory to the issuers of operating company equity securities as the benefits the issuers of these other classes of securities receive in connection with their listings are consistent with the current fee levels paid by those issuers. This

is because those types of listings do not generally benefit to the same extent from services provided by the Exchange as do issuers of operating company equity securities.

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.

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, 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 has become effective upon filing pursuant to Section 19(b)(3)(A)⁹ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing 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 (<http://www.sec.gov/rules/sro.shtml>); or

⁹ 15 U.S.C. 78s(b)(3)(A).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2022-56 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-NYSEAMER-2022-56. 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-NYSEAMER-2022-56 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.¹⁰

Sherry R. Haywood,

Assistant Secretary.

¹⁰ 17 CFR 200.30-3(a)(12).