

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89773; File No. SR-NYSE-2020-40)

September 4, 2020

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 to Waive Initial Listing Fees and First Partial Year Annual Listing Fees for Any Issuer Not Listed on a National Securities Exchange That Is Listing upon Closing of Its Acquisition of a SPAC Listed on the NYSE

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 August 25, 2020, 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 902.02 of the NYSE Listed Company Manual (the “Manual”) to waive initial listing fees and the first partial year annual fee for any company not listed on a national securities exchange that is listing upon closing of its acquisition of a special purpose acquisition company listed on the NYSE. 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 902.02 of the Manual to waive initial listing fees and the first partial year annual fee for any company not listed on a national securities exchange that is listing upon closing of its acquisition of a special purpose acquisition company ("SPAC") listed on the NYSE.

When a SPAC consummates its business combination, the SPAC is typically the legal acquirer in the transaction and, provided it meets the continued listing standards applied in connection with a business combination by a listed SPAC, it can remain listed on the Exchange. Section 902.11 of the Manual specifies that a listed SPAC is not required to pay any supplemental listing fees for any shares issued in connection with its business combination, so there are no listing fees payable in connection with a business combination between an NYSE listed SPAC and a company which is not listed on a national securities exchange where the NYSE listed SPAC is the acquirer in the transaction.⁴ Similarly, the NYSE does not have any

⁴ Section 902.11 provides as follows:

An Acquisition Company which remains listed upon consummation of its Business Combination will not be subject to any fees in relation to the issuance of any additional

provision for charging prorated annual fees with respect to shares of currently listed companies issued during the course of a calendar year (such shares are reflected in the full year annual fee bill for the next subsequent calendar year). As such, there are no prorated annual fees billed in connection with the issuance of additional shares upon consummation of a business combination by an NYSE listed SPAC in which the SPAC is the surviving legal entity. By contrast, if a company that is not listed on the NYSE or another national securities exchange merges with a NYSE listed SPAC and the non-listed company is the acquirer in the transaction, the non-listed company is treated as a new listing and must pay initial listing fees and prorated annual fees in relation to all shares issued and outstanding at the time of initial listing.⁵

To address this disparity, the Exchange proposes to amend the fee waiver provisions of Section 902.02 of the Manual. Specifically, Section 902.02 includes a waiver of the initial listing fee applicable to the listing of a company that is not itself listed on a national securities exchange immediately prior to its initial listing on the Exchange but is listing a class of equity

shares in connection with the consummation of the Business Combination or the issuance of any additional shares in a transaction which is occurring at the same time as the Business Combination with a closing contractually contingent on the consummation of the Business Combination.

As the treatment of the issuance of additional shares by a NYSE listed SPAC in connection with its business combination is specifically dealt with by the fee waiver set forth in Section 902.11, the provisions of Section 902.03 with respect to the issuance of additional shares are inapplicable to issuances that qualify for the waiver under Section 902.11.

⁵ Pursuant to an exception set forth in Section 902.03 of the Manual, in the case of transactions such as an a merger between a listed and an unlisted company in which the unlisted company is the survivor, listing fees for that newly listed issuer are calculated at a rate of 25% of total Listing fees for each class of securities being listed (to the extent that total calculated listing fee for a class of common shares would be greater than \$295,000, the calculation would be 25% of the \$295,000 maximum for a new listing of common shares). The special charge of \$50,000 and the \$150,000 minimum charge applicable when an issuer first lists a class of common shares do not apply to these types of transactions.

securities upon closing of its acquisition of a SPAC which had a class of equity securities listed on another national securities exchange prior to the closing of such acquisition. The Exchange proposes to extend this waiver so that it will apply in cases where a company that is not itself listed on a national securities exchange immediately prior to its initial listing on the Exchange is listing a class of equity securities upon closing of its acquisition of a SPAC which had a class of equity securities listed on the NYSE prior to the closing of such acquisition. Similarly, Section 902.02 currently provides that the Exchange waives for any company that is not listed immediately prior to listing its primary class of common shares upon closing of its acquisition of a SPAC the requirement to pay annual fees with respect to that primary class of common shares or any other class of securities listed in conjunction therewith for the remainder of the calendar year in which the listing occurs. The Exchange also proposes to extend this waiver so that it will apply in cases where a company that is not itself listed on a national securities exchange immediately prior to its initial listing on the Exchange is listing a class of equity securities [sic] upon closing of its acquisition of a SPAC which had a class of equity securities listed on the Exchange prior to the closing of such acquisition. The decision whether to structure a business combination with the SPAC as the legal acquirer rather than the other party does not result in the listing of a substantively different entity. Accordingly, the Exchange believes there is no basis for charging fees purely on the basis of the structure of the business combination chosen by the parties.

The Exchange does not expect there to be a significant number of listings in which this proposed fee waiver will be applicable. Consequently, 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,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 Proposed Change is Reasonable

The Exchange operates in a highly competitive marketplace for the listing of equity securities. 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

listings and retain existing listings.

The Proposal is an Equitable Allocation of Fees

The Exchange believes that the proposed fee waivers are equitable as it being implemented solely to avoid an anomalous fee outcome arising from the manner in which a SPAC business combination has been structured.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory, because the proposed waivers are solely intended to avoid the impact on a small group of issuers of an anomalous fee outcome arising from the manner in which a SPAC business combination has been structured. Section 902.11 includes a specific waiver of all listing fees for the issuance of shares by an NYSE listed SPAC which remains listed upon consummation of its business combination in relation to the issuance of any additional shares in connection with the consummation of the business combination or the issuance of any additional shares in a transaction which is occurring at the same time as the business combination with a closing contractually contingent on the consummation of the business combination. Similarly, the NYSE does not have any provision for charging prorated annual fees with respect to shares of currently listed companies issued during the course of a calendar year (such shares are reflected in the full year annual fee bill for the next subsequent calendar year). As such, there are no prorated annual fees billed in connection with the issuance of additional shares upon consummation of a business combination by an NYSE listed SPAC in which the SPAC is the surviving legal entity. By contrast, if a company that is not listed on the NYSE or another national securities exchange merges with a NYSE listed SPAC and the non-listed company is the acquirer in the transaction, the non-listed company is treated as a new listing and must pay initial

listing fees and prorated annual fees in relation to all shares issued and outstanding at the time of initial listing.

A SPAC is a shell company with no business operations. Consequently, the parties to a business combination between a SPAC and an operating company have significant flexibility in how they choose to structure the business combination, including in determining which entity will be the legal acquirer. Accordingly, the Exchange is proposing to amend its fee structure to reflect the incidental nature of the resulting SPAC business combination and to avoid treating companies undergoing similar business combinations disparately.

By contrast to a SPAC business combination, there are typically more significant limitations on the ability of the parties to a merger between two operating companies to make decisions about which entity will be the acquirer, including, for example, the desire to maintain the acquirer's SEC registration and concerns about how to present the combined entity to the market. As such, it is much more likely that the listing fee implications of how the transaction is structured would be a major consideration for the parties to a SPAC business combination than would be the case in a merger between two operating companies. As the implications of the proposed fee waivers for decisions relating to the transaction structures utilized by unlisted companies listing in connection with the acquisition of a SPAC are typically greater than for other companies listing in conjunction with merger transactions, the proposed waivers are not unfairly discriminatory.

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.

Intramarket Competition.

The proposed waiver will be available to all similarly situated issuers on the same basis. The proposed waiver will address an anomalous discrepancy in fee treatment between business combinations of NYSE listed SPACs and companies that are not listed on a national securities exchange based solely on which entity is the legal survivor in the transaction. The Exchange does not believe that the proposed waivers 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 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)⁹ of the

⁹ 15 U.S.C. 78s(b)(3)(A).

Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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)¹¹ 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-2020-40 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-2020-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

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-2020-40 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).