

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93865; File No. SR-NYSE-2021-68)

December 23, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Revise the Suite of Complimentary Products and Services Offered to Listed Companies

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 December 13, 2021, 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 revise the suite of complimentary products and services offered to listed companies pursuant to Section 902.07 [sic] of the NYSE Listed Company Manual. 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 places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Products and Services Currently Provided Under Section 907.00

Section 907.00 of the NYSE Listed Company Manual sets forth complimentary products and services that issuers are entitled to receive in connection with their NYSE listing. The Exchange currently offers certain complimentary products and services and access to discounted third-party products and services through the NYSE Market Access Center to currently and newly listed issuers. The Exchange also provides complimentary market surveillance products and services (with a commercial value of approximately \$55,000 annually), Web-hosting products and services (with a commercial value of approximately \$16,000 annually), Web-casting services (with a commercial value of approximately \$6,500 annually), market analytics products and services (with a commercial value of approximately \$30,000 annually), and news distribution products and services (with a commercial value of approximately \$20,000 annually).

The products and services are offered to Eligible New Listings⁴ and Eligible Transfer

⁴ For purposes of Section 907.00, the term "Eligible New Listing" means (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under 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 and (ii) 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).

Companies⁵ based on the following tiers:⁶

Tier A: For Eligible New Listings and Eligible Transfer Companies with a global market value of \$400 million or more, in each case calculated as of the date of listing on the Exchange, the Exchange offers market surveillance, market analytics, Web-hosting, Web-casting, and news distribution products and services for a period of 48 calendar months.

Tier B: For Eligible New Listings and Eligible Transfer Companies with a global market value of less than \$400 million, in each case calculated as of the date of listing on the Exchange, the Exchange offers Web-hosting, market analytics, Web-casting, and news distribution products and services for a period of 48 calendar months.

The products and services are offered to currently listed companies that meet the eligibility requirements (“Eligible Current Listings”) based on the following tiers:

Tier One: The Exchange offers (i) a choice of market surveillance or market analytics products and services, and (ii) Web-hosting and Web-casting 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 non-U.S. companies that have 270 million or more shares of an equity security issued and outstanding in the U.S., each

⁵ For purposes of Section 907.00, the term “Eligible Transfer Company” means any U.S. or non-U.S. company that transfers its listing of common stock or equity securities, respectively, to the Exchange from another national securities exchange. For purposes of Section 907.00, an "equity security" means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depository Receipts, or Global Depository Receipts.

⁶ Section 907.00 provides for separate service entitlements for Acquisition Companies listed under Section 102.06 and the issuers of Equity Investment Tracking Stocks listed under Section 102.07.

calculated annually as of September 30⁷ of the preceding year.

Tier Two: At each such issuer's election, the Exchange offers a choice of either: 1) market analytics; or 2) Web-hosting and Web-casting products to:

(1) 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 to Treasury shares, calculated annually as of September 30⁸ of the preceding year; and

(2) non-U.S. companies that have 160 million to 269,999,999 shares of an equity security issued and outstanding in the U.S., calculated annually as of September 30⁹ of the preceding year.

In addition to the foregoing, the Exchange provides all listed issuers with complimentary access to whistleblower hotline services (with a commercial value of approximately \$4,000 annually) for a period of 24 calendar months.

Proposed Amendments to Section 907.00

The Exchange proposes to amend Section 907.00. Once the amendments described herein are approved, Eligible Current Listings will be entitled on a prorated annual basis to a new suite of products and services starting on the first day of the first calendar month after the

⁷ A U.S. issuer or non-U.S. company that has the requisite number of shares outstanding on September 30 will begin (or continue, as the case may be) to receive the suite of complimentary products and services for which it is eligible as of the following January 1. In the event that a U.S. issuer or non-U.S. company completes a corporate action between October 1 and December 31 that increases the number of shares it has outstanding, the Exchange will calculate its outstanding shares as of December 31 and determine whether it has become eligible to receive Tier One or Tier Two services. If eligible, the Exchange will offer such services as of the immediately succeeding January 1.

⁸ Id.

⁹ Id.

approval date for the proposed amendments.¹⁰ Eligible New Listings and Eligible Transfer Companies will receive the proposed new suite of products and services if they list on or after the date this proposal is approved by the SEC.¹¹

Issuers are not required as a condition of listing to utilize the complimentary products and services available to them pursuant to Section 907.00 and issuers may decide to contract themselves for other products and services. Companies receiving products and services as Eligible New Listings or Eligible Transfer Companies¹² that list before the operative date will continue to be eligible to receive the products and services for which they are eligible under the rule as in effect before that date.

Modified List of Products and Services

The Exchange proposes to amend the suite of products and services provided under Section 907.00. As amended, the suite of available products and services would be as follows: market intelligence (with a maximum commercial value of approximately \$50,000 annually), market analytics (with a maximum commercial value of approximately \$30,000 annually), board of directors platform (with a maximum commercial value of approximately \$40,000 annually), virtual event platform (with a maximum commercial value of approximately \$30,000 annually),

¹⁰ The current form of Section 907.00 will remain in the Manual and be applicable to Eligible Current Listings for the period beginning January 1, 2022 through the end of the calendar month in which these proposed amendments are approved. During that period, Eligible Current Listings will be entitled to receive the annual suite of products and services currently set forth in Section 907.00, on a prorated basis. Eligible New Listings and Eligible Transfer Companies that list prior to approval of the proposed amendments will be entitled to the suite of products and services for which they are eligible under Section 907.00 in its current form.

¹¹ Id.

¹² The Exchange is not proposing to change the definitions of Eligible New Listings and Eligible Transfer Companies.

environmental, social and governance tools (collectively “ESG”) (with a maximum commercial value of approximately \$30,000 annually), Web-hosting and Web-casting products and services (with a maximum commercial value of approximately \$25,000 annually), and news distribution products and services (with a maximum commercial value of approximately \$20,000 annually).¹³

The proposed services offering includes market intelligence, rather than market surveillance in the current rule. This change reflects a change over time in the scope of the types of service packages offered by the service providers from whom the Exchange purchases these services. Historically, those packages were generally limited to providing surveillance services, which consisted of monitoring an issuer’s larger shareholders and how the size of their holdings changed over time. These service providers now also provide additional information that is intended to track investors’ views about an issuer and how those views change over time. As this additional service is included in the package provided to listed companies, the Exchange believes it is appropriate to reflect that fact by changing the terminology from market surveillance to market intelligence. The small decrease in the value attributed to this service is a result of pricing competition in a highly competitive market for these services.

The current rule treats Web-hosting and Web-casting services as two separate items in the suite of available services, while the proposed rule amendments aggregate them as a single

¹³ The proposed rule amendments do not refer to these products and services being provided through the Exchange’s Market Access Center, as is the case in the comparable description in the current rule. This does not reflect any change in the nature of the services to be provided or how issuers will access those services. The Market Access Center concept was simply a way of identifying the entire suite of available products and services and promoting their availability to issuers. The Exchange no longer emphasizes this approach in communicating with issuers about the products and services and therefore proposes to remove the reference to the Market Access Center from Section 907.00.

option. The Exchange is making this change in response to developments over time in how its service providers package their service offerings, as service providers now market these two services together rather than separately. The aggregate value of Web-hosting and Web-casting services would increase slightly due to increased prices charged by service providers.

In certain cases, the proposed rule amendments adopt a different approach from the current rule in how it gives companies the ability to choose the services they receive. The current rule is structured to give listed companies a choice among the various service categories, where choosing a particular service requires the company to forego another service category entirely (for example, a company with Tier One eligibility can choose either market surveillance or market analytics products and services but cannot receive both). The proposed rule amendments adopt a more flexible approach for: (i) Eligible New Listings and Eligible Transfers that qualify for Tier A; and (ii) currently listed companies that qualify for Tier One. In these cases, companies will be eligible to choose different levels of services from the different categories, subject to a maximum overall value of services used. The Exchange believes that this approach will provide companies with appropriate flexibility in choosing the types and levels of service that best meet their needs, while providing that all qualified companies within a tier are entitled to receive the same dollar value of services.

Amended Offering for Eligible New Listings and Eligible Transfers

The proposed amended offering of products and services for Eligible New Listings and Eligible Transfers would be as follows:

Tier A: For a period of 48 calendar months, Eligible New Listings and Eligible Transfer Companies that list on the Exchange after approval of these amendments with a global market value of \$400 million or more, in each case calculated as of the date of listing on the Exchange,

the Exchange offers products and services with a maximum combined commercial value of approximately \$125,000 annually, consisting of (i) Web-hosting and Web-casting products and services and (ii) news distribution products and services and (iii) a selection from among a suite of products and services, including market intelligence, market analytics, board of directors platform, virtual event platform, or ESG products and services.

Tier B: For a period of 48 calendar months, Eligible New Listings and Eligible Transfer Companies that list on the Exchange after approval of these amendments with a global market value of less than \$400 million, in each case calculated as of the date of listing on the Exchange, the Exchange offers (i) Web-hosting and Web-casting products and services; (ii) market analytics; and (iii) news distribution products and services.

The methodology used for determining global market value under the proposed amended rule for an Eligible New Listing or Eligible Transfer Company would be the same as is used under the current rule.

Amended Offering for Currently Listed Companies

The proposed amended offering of products and services for Eligible Current Listings would be as follows:

Tier One: For 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 non-U.S. companies that have 270 million or more shares of an equity security issued and outstanding in the U.S., each calculated annually as of September 30 of the preceding year, the Exchange would offer products and services with a maximum combined commercial value of approximately \$75,000 annually, consisting of (i) Web-hosting and Web-casting products and services and (ii) a selection from among a suite of products and services, including market

intelligence, market analytics, board of directors platform, virtual event platform, or ESG products and services.

Tier Two: At each issuer's election, the Exchange would offer a choice of: (i) market analytics; (ii) Web-hosting and Web-casting products; or (iii) virtual event platform to:

(1) 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 to Treasury shares, calculated annually as of September 30 of the preceding year; and

(2) non-U.S. companies that have 160 million to 269,999,999 shares of an equity security issued and outstanding in the U.S., calculated annually as of September 30 of the preceding year.

The methodology used in determining the number of shares issued and outstanding for purposes of eligibility for Tier One or Tier Two would be the same as under the current rule.

Proposal to Adjust Entitlements of Currently Listed Companies After January 1

The Exchange proposes to grant enhanced eligibility for products and services under Section 907.00 to companies that become eligible during the course of a calendar year. In the event that a U.S. issuer or non-U.S. company completes a corporate action during the course of a calendar year for which its eligibility for services is being determined and that corporate action increases the number of shares it has outstanding, the Exchange would calculate its outstanding shares immediately after such corporate action and determine whether it has become eligible to receive Tier One or Tier Two services. If eligible, the Exchange would offer such services for the remainder of that calendar year, with such eligibility commencing as of the beginning of the following calendar month.

Period of Eligibility for Whistleblower Services

The Exchange currently provides all listed issuers with complimentary access to

whistleblower hotline services (with a commercial value of approximately \$4,000 annually) for a period of 24 calendar months. The Exchange proposes to extend this period of eligibility to 48 months.

The specific tools and services offered to Eligible New Listings and Eligible Transfer Companies and eligible currently listed companies as part of the complimentary offering limited to those categories of issuers under Section 907.00 are provided solely by third-party vendors. In deciding which complimentary products and services to provide, the NYSE considers the quality of competing products and services and the needs of its listed issuers in selecting the vendors. The NYSE may change vendors from time to time based on this ongoing review of the products and services provided by current vendors and its willingness to change vendors is consistent with competition for vendor services.

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, NYSE notes that it may choose to use multiple vendors for the same type of product or service. The NYSE also notes that, from time to time, issuers elect to purchase products and services from other vendors at their own expense instead of accepting the products and services described above offered by the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”) generally.¹⁴ Section 6(b)(4)¹⁵ requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

members and issuers and other persons using the facilities of an exchange. Section 6(b)(5)¹⁶ requires, among other things, that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers, or dealers. Section 6(b)(8)¹⁷ prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The NYSE faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The Exchange believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition.

The Exchange does not believe that the proposal to modify the suite of complimentary products and services it provides to eligible listed companies harms the market for those products and services in a way that constitutes a burden on competition or an inequitable allocation of fees or fails to promote just and equitable principles of trade, in a manner inconsistent with the Act. The specific tools and services offered to eligible listed companies as part of the complimentary offering under Section 907.00 are provided solely by third-party vendors. As noted above, issuers are not required to utilize the complimentary products and services and some issuers have selected competing products and services. The NYSE believes that its consideration of quality and the needs of its listed issuers in selecting the vendors and its willingness to change vendors is consistent with competition for vendor services. In this regard, the NYSE notes that it may choose to use multiple vendors for the same type of product or service. The NYSE also notes that, from time to time, issuers elect to purchase products and services from other vendors at their own expense instead of accepting the products and services described above offered by the

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(8).

Exchange.

The proposed rule amendments make a number of adjustments in the types and levels of products and services provided to companies. Those adjustments are minor in nature and generally reflect changes in which the service providers on which the Exchange relies package their products and services. Nor is there any significant change in the overall value of the services to which any company would be entitled. Consequently, the Exchange believes that the proposed amendments to the available products and services, and the terms on which they are offered, represent an equitable allocation of the services provided under the rule and is not unfairly discriminatory.

The proposed rule amendments provide that (i) Eligible New Listings and Eligible Transfers that qualify for Tier A; and (ii) currently listed companies that qualify for Tier One will, in each case, be eligible to choose different levels of services from the different categories subject to a maximum overall value of services used. The Exchange believes that this approach is not unfairly discriminatory as it simply provides companies with appropriate flexibility in choosing the types and levels of service that best meet their needs while ensuring that all qualified companies within a tier are entitled to receive the same dollar value of services.

The proposed rule amendments provide for the ability of companies to qualify for Tier One or Tier Two services during the course of a calendar year and receive those services on a prorated basis for the balance of that calendar year. As these companies would only become eligible if they met the same shares outstanding requirements as companies that were already receiving the services of the applicable tier, the Exchange believes that this proposed amendment represents an equitable allocation of the services provided under the rule and is not unfairly discriminatory.

Finally, the Exchange also believes it is reasonable to balance its need to remain competitive with other listing venues, while at the same time ensuring adequate revenue to meet its regulatory responsibilities. The Exchange notes that no other company will be required to pay higher fees because of this proposal, and it represents that providing the proposed services will have no impact on the resources available for its regulatory programs.

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 not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule change reflects that competition, but it does not impose any burden on the competition with other exchanges. Rather, the Exchange believes the proposed changes will enhance competition for listings, as it will increase the competition for new listings and the listing of companies that are currently listed on other exchanges. Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, the Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

In addition, the Exchange does not believe that the proposal to modify the suite of complimentary products and services it provides to eligible listed companies will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the NYSE notes that the specific tools and services offered to eligible listed companies as part of the complimentary offering limited to those categories of issuers under Section 907.00 are provided solely by third-party vendors. In addition, the NYSE may choose to

use multiple vendors for the same type of product or service. The NYSE also notes that currently listed and newly listed companies would not be required to accept the offered products and services from the NYSE, and an issuer's receipt of an NYSE listing is not conditioned on the issuer's acceptance of such products and services. In addition, the NYSE notes that, from time to time, issuers elect to purchase products and services from other vendors at their own expense instead of accepting the products and services described above offered by the Exchange.

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 up to 90 days (i) as the Commission may designate 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-

2021-68 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-2021-68. 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-NYSE-2021-68 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.¹⁸

Eduardo A. Aleman
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).