

investors and listed companies.”¹⁶ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁷ Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on 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 pursuant to Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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. If the Commission takes such action, the Commission will institute proceedings 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 email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2022-011 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-CboeBZX-2022-011. 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 (<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-CboeBZX-2022-011 and should be submitted on or before April 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94378; File No. SR-NYSE-2022-12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 902.03 and 902.11 of the NYSE Listed Company Manual To Establish Fees for the Listing of Rights

March 8, 2022.

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 February 25, 2022, 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 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 Sections 902.03 and 902.11 of the NYSE Listed Company Manual (the “Manual”) to establish fees for the listing of rights and to remove rule text that is no longer applicable. 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 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.

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁷ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new listing standard to provide for the listing of rights (*See* Section 703.12(II) of the Manual).⁴ The Exchange now proposes to adopt fees for listed rights.

The Exchange proposes to adopt a fee schedule for listed rights equivalent to that currently applicable to listed warrants. Both types of securities represent the right to acquire shares of a listed equity security at a future time. The distinction is that, unlike warrants, rights are generally distributed without charge to all of the holders of a class of existing listed securities. Given the similarities, the Exchange anticipates that the resources devoted to the listing and regulation of rights will be substantially the same as is already the case for listed warrants. As such, the Exchange proposes to apply the same fee schedule to listed rights as it currently applies to warrants under Section 902.03 of the Manual. In connection with the listing of a class of warrants, Section 902.03 provides for a fee of \$0.004 per warrant. Section 902.03 provides that listed warrants are subject to annual fees at a rate of \$0.0017 per warrant, subject to a minimum annual fee of \$5,000 per series of warrants. While the aforementioned fees currently apply to listed warrants, there are specific provisions for warrants of two types of issuers—foreign issuers and Acquisition Companies. As described below, the Exchange proposes to apply the same fees for rights associated with those types of companies.

Section 902.03 includes text that describes fees for warrants issued by foreign companies, where the common equity securities into which the warrants are exercisable trade in the form of American Depositary Receipts on the Exchange. Specifically, Section 902.03 provides that, where a listed company's primary listed security is an ADR and it lists warrants that are exercisable into the equity securities underlying such ADRs, it will be charged: (i) Initial listing fees for the warrants adjusted to reflect the maximum number of ADRs that could be created upon exercise of such warrants; and (ii) annual fees for the outstanding warrants adjusted to reflect the maximum number of ADRs that

could be created upon exercise of such warrants. The Exchange proposes to apply these same provisions to rights issued by a foreign company where the company's primary listed security is an ADR and it lists rights that are exercisable into the equity securities underlying such ADRs.

Section 902.11 sets forth the fees applicable to Acquisition Companies (*i.e.*, Special Purpose Acquisition Companies or "SPACs") listed under Section 102.06 of the Manual. SPACs typically sell units in their initial public offering consisting of a common share and one or more warrants (or a fraction of a warrant). Under Section 902.11, a listed Acquisition Company is subject to a flat annual fee of \$85,000, covering both its common shares and its warrants. The Exchange proposes to amend this provision to specify that the flat annual fee also covers any rights issued by the Acquisition Company.

The Exchange also proposes to delete rule text from both Section 902.03 and Section 902.11 regarding fees that were in effect for calendar years prior to 2022 but are no longer in effect, as this rule text is now irrelevant.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4)⁶ 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,⁷ 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 operates in a highly competitive marketplace for the listing of the various categories of securities, including the rights affected by the proposed fees. 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,⁸ 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."⁹

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.

As discussed above, rights are very similar in their structure to warrants. And the Exchange anticipates devoting substantially the same resources to the listing of a series of rights as it does to the listing of a series of warrants. Therefore, the Exchange believes that it is reasonable and represents an equitable allocation of its fees among market participants to apply to listed rights the existing fees currently charged to issuers of listed warrants.

The Exchange believes that the proposal is not unfairly discriminatory because the same fee schedule will apply to all issuers of listed rights. In addition, rights have substantial structural similarities to warrants and the Exchange believes it is therefore appropriate to apply the same fee schedule to the two classes of securities. Conversely, rights are not similar in nature to any other class of securities listed on the Exchange, so the Exchange does not believe it is unfairly discriminatory to charge different fees for the listed rights than for any other class of listed securities other than warrants. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other national securities exchanges currently list rights, and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its rights or to list them on an alternative venue.

The Exchange believes that the proposal to charge listing fees for rights on an ADR-equivalent basis is equitable and not unfairly discriminatory because

⁴ See Securities Exchange Act Release No. 94075 (January 27, 2022); 87 FR 5915 (February 2, 2022) (SR-NYSE-2022-03).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Release No. 34-51808 (June 9, 2005); 70 FR 37496 (June 29, 2005).

⁹ See Regulation NMS, 70 FR at 37499.

it would remove the anomalous outcome that a company whose listed ADRs represent multiple underlying common shares would otherwise be required to pay higher fees for the listing of rights exercisable into its listed equity securities than are paid by a company whose common stock is listed directly or whose listed ADRs represent a single common share.

The Exchange recognizes that the proposal would result in a differential treatment of rights issued by companies with ADRs listed on the Exchange from that of other issuers of rights, leading to lower bills in many cases for the companies with listed ADRs. However, the Exchange notes that companies with listed ADRs that represent multiple underlying shares (or fractional shares) face unique circumstances when deciding how to structure their rights. If those companies want to market their rights in both their home market and the United States, there are clear advantages to the company and its investors if the same security is issued in both markets. In particular, issuing the same security avoids pricing confusion and, by ensuring complete fungibility, facilitates the movement of rights between the two markets in aftermarket trading. As the ADRs would not be traded in the home market and might not be properly understood by investors there, it is clear why a company would make the decision to issue rights to purchase a single common share in both markets rather than issuing rights to purchase ADRs in the US market and rights to purchase a single share in the home market. While other categories of listed companies may also sometimes choose to issue rights that are exercisable for multiple listed common shares or a fraction of a common share, their reasons for doing so are not the same unique market structural reasons that cause foreign companies to do so when their listed equity security is an ADR. Consequently, while the proposal does result in a different treatment of foreign companies with listed ADRs in a very limited circumstance, the Exchange believes that this proposed difference in treatment is not unfairly discriminatory. The Exchange also notes that foreign companies with listed ADRs would not always pay lower fees on rights if this proposal was adopted. Rather, the issuer would always pay fees on an ADR-equivalent basis, which would result in lower fees if the listed ADR represents multiple common shares and higher fees if it represents a fractional common share.

The changes the Exchange proposes to make to Sections 902.02 and 902.11 to remove provisions that are no longer

needed, as they do not apply by their terms to any calendar year starting after January 1, 2022, are non-substantive in nature.

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 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 in response, 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 is effective upon filing pursuant to Section 19(b)(3)(A) ¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4 ¹¹ 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) ¹² 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 email to rule-comments@sec.gov. Please include File Number SR-NYSE-2022-12 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-2022-12. 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 (<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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 15 U.S.C. 78s(b)(2)(B).

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-2022-12 and should be submitted on or before April 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-05248 Filed 3-11-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-188, OMB Control No. 3235-0212]

Proposed Collection; Comment Request; Extension: Rule 12b-1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 12b-1 under the Investment Company Act of 1940 (17 CFR 270.12b-1) permits a registered open-end investment company ("fund") to bear expenses associated with the distribution of its shares, provided that the fund complies with certain requirements, including, among other things, that it adopt a written plan ("rule 12b-1 plan") and that it preserves

in writing any agreements relating to the rule 12b-1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b-1 plan be approved by the fund's directors, including its independent directors, and, in certain circumstances, its shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b-1 plan; and (iii) the board, including the independent directors, consider continuation of the rule 12b-1 plan and any related agreements at least annually. Rule 12b-1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b-1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b-1 plan.

Rule 12b-1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions. The rule requires funds that use broker-dealers that sell their shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser, or its principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.

The board and shareholder approval requirements of rule 12b-1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b-1 plan and, thus, are necessary for investor protection. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b-1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

Commission staff estimates that there are approximately 6,358 funds (for purposes of this estimate, registered open-end investment companies or series thereof) that have at least one share class subject to a rule 12b-1 plan and approximately 454 fund families with common boards of directors that have at least one fund with a 12b-1 plan. The Commission further estimates that the annual hour burden for complying with the rule is 425 hours for each fund family with a portfolio that has a rule 12b-1 plan. We therefore estimate that the total hourly burden per year for all funds to comply with current information collection requirements under rule 12b-1 is 192,950 hours. Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b-1 plan. The staff further estimates that the cost of each fund's proxy is \$30,000. Thus, the total annual cost burden of rule 12b-1 to the fund industry is \$90,000.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collections of information required by rule 12b-1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by May 13, 2022.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John Pezzullo, 100 F Street NE, Washington,

¹³ 17 CFR 200.30-3(a)(12).