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

Pursuant to Section 907.00 of the Manual, the Exchange offers a suite of complimentary products and services to certain companies currently listed on the Exchange (“Eligible Current Listings”). A company qualifies to receive such complimentary products and services based on the number of shares of common stock in the case of U.S. companies or other equity security in the case of non-U.S. companies that it has outstanding. Presently, the Exchange determines eligibility to receive complimentary products and services for a calendar year based on the number of shares outstanding as of September 30 of the immediately preceding calendar year. If a company has the requisite number of shares outstanding on September 30, it 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.

For planning and budgeting purposes, it is helpful for both the Exchange and listed companies to determine a reasonable period in advance the Tier One and Tier Two Eligible Current Listings that will receive complimentary products and services the following year. Therefore, the Exchange has

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current proposal seeks to address this anomaly by ensuring that companies obtain the benefits of listing normally provided to other issuers paying comparable annual listing fees.

In the event that a U.S. issuer or non-U.S. company that was eligible for Tier One or Tier Two services as of September 30, then completes a corporate action between October 1 and December 31 that reduces its shares outstanding and makes it no longer eligible, the Exchange proposes that it would not discontinue services as of the following January 1. Instead, the Exchange proposes that it would re-evaluate the following September 30 and determine to discontinue as of the following January 1 if the issuer remained ineligible. The Exchange believes it could be unnecessarily harmful to an issuer that reduces its outstanding shares due to a corporate action in the fourth quarter to immediately discontinue providing services the following year. As described above, a significant reason for determining eligibility on September 30 is to provide ineligible issuers time to budget and plan to procure services from an alternative vendor. The Exchange believes that any company that undertakes a corporate action in the fourth quarter that results in a reduction in its shares outstanding is likely doing so for reasons other than to reduce its forthcoming annual listing fee. A company in that situation may have expected that it would be eligible for Tier One or Tier Two services based on its September 30 shares outstanding and the Exchange believes it could disadvantage them to discontinue services so close to the year end.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,9 in general, and furthers the objectives of Sections 6(b)(4)10 of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)11 of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that its proposed rule change is consistent with Section 6(b)(4) of the Act because it ensures that all companies that are subject to the same fee structure as of January 1 each year are also eligible to receive the same benefits of listing. Under existing rules, the Exchange charges companies an annual fee based on shares outstanding on December 31, but determines eligibility for complimentary products and services based on shares outstanding as of September 30. The proposed rule change will ensure that, for the vast majority of listed companies, the Exchange takes into account a company’s shares outstanding on December 31 not only for purposes of charging annual listing fees but also for purposes of determining an issuer’s eligibility to receive complimentary products and services.

The Exchange believes that its proposed rule change is consistent with Section 6(b)(5) of the Act because it prevents unfair discrimination between issuers by ensuring that no issuer is deprived of eligibility for services simply because they became a Tier One or Tier Two Eligible Current Listing in the fourth quarter does not significantly impact the public interest or impose any significant burden on competition. Such proposal simply offers all issuers a measure of protection against having their services discontinued on short notice.

C. Self-Regulatory Organization’s Statement on Burden on Competition

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become effective for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act11 and Rule 19b–4(f)(6) thereunder.12

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 shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

7 However, if a company remained ineligible on September 30, but regained eligibility between October 1 and December 31, it would continue to receive the package of services for which it became eligible.
12 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.
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–2016–77 on the subject line.

Paper Comments
- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–77. 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 Web site (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 Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–77, and should be submitted on or before December 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.13
Robert W. Errett, Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 15 Relating to Pre-Opening Indications

November 23, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder, notice is hereby given that on November 17, 2016, 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 and II 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 Rule 15 relating to pre-opening indications. The proposed rule change is available on the Exchange’s Web site 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.

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 Rule 15 relating to pre-opening indications. The proposed rule changes would restore the obligation for a DMM to publish a pre-opening indication if a security has not opened by 10:00 a.m. Eastern Time and add a new parameter for when a pre-opening indication should be published for lower-priced securities.

Background

The Exchange recently amended Exchange rules to consolidate and amend requirements relating to pre-opening indications in Rule 15.4 Rule 15(a) provides that a pre-opening indication will include the security and the price range within which the opening price is anticipated to occur and that a pre-opening indication will be published via the securities information processor and proprietary data feeds. Rule 15(b) specifies the conditions for publishing a pre-opening indication, and Rule 15(b)(1) provides that a DMM will publish a pre-opening indication, as described in Rule 15(e), before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range” from a specified “Reference Price” before the security opens.

Under Rule 15(c), the Reference Price for a security, other than an ADR, is the securities last reported stale price on the Exchange, the security’s offering price in the case of an initial public offering (“IPO”), or the security’s last reported sale price in the securities market from which the security is being transferred to the Exchange. Rule 15(d)(1) provides that, except under conditions set forth in Rule 15(d)(2), the Applicable Price Range for determining whether to publish a pre-opening indication will be 5%. Rule 15(d)(2) provides that if as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are ±2% from the prior day’s closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide trading halt under Rule 80B, or if the Exchange