12, 2017, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2016–136).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28778 Filed 11–29–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79383; File No. SR–NYSE–2016–77]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 907.00 of the Listed Company Manual

November 23, 2016.

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 November 10, 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 Section 907.00 of the Listed Company Manual (the ''Manual'') to clarify how it will treat currently listed U.S. issuers and non-U.S. companies who qualify to receive Tier One or Tier Two services as a result of a corporate action completed between October 1 and December 31 of a particular calendar year. 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

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.[4]

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.[5] Therefore, the Exchange has historically looked at a company's shares outstanding as of September 30 to determine qualification for the following year. On occasion, there is a company that does not qualify [sic] Tier One or Tier Two services based on its shares outstanding as of September 30, but that subsequently completes a corporate action (such as a share issuance or stock split) between October 1 and December 31 that would enable it to either (i) qualify for the first time or (ii) qualify for a higher tier of services if the Exchange made its eligibility determination as of a later date. Under existing Exchange rules, the unfortunate outcome for such companies is that they do not qualify to receive complimentary products and services for, in some cases, nearly 15 months after they became eligible.

The Exchange proposes to amend Section 907.00 of the Manual to clarify that, if a company becomes a Tier One or Tier Two Eligible Current Listing due to a corporate action completed between October 1 and December 31 of a particular year that results in an increased number of outstanding shares, such company will receive the suite of complimentary products and services to which it is entitled by virtue of that designation as of the immediately following January 1. The Exchange will continue to conduct its initial eligibility review as of September 30. This will enable the Exchange to capture the vast majority of Tier One and Tier Two Eligible Current Listings to assist both itself and listed companies in their planning and budget process for the following year. The Exchange will then conduct a secondary review each year towards the end of December to determine whether any additional companies have become eligible to receive services or have become eligible to receive a higher tier or [sic] services.

The Exchange notes that listed companies are subject to an annual fee that is billed each January 1 and is calculated based on the number of shares outstanding on the preceding December 31.[6] In this regard, under the Exchange's existing rules, a company that increases its shares outstanding due to a corporate action completed subsequent to September 30 would be billed a higher annual fee on the following January 1 but would not receive any complimentary products and services for which it may be eligible for an entire year. The Exchange's

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Eligible Current Listings that have 270 million or more shares issued and outstanding as of September 30 (each a ''Tier One Eligible Current Listing'') are presently offered (i) a choice of market surveillance or market analytics products and services, and (ii) Web-hosting and Web-casting products and services, on a complimentary basis. Eligible Current Listings that have between 160 million and 269.9 million shares issued and outstanding as of September 30 (each a ''Tier Two Eligible Current Listing'') are presently offered a choice of market analytics or Web-hosting and Web-casting products and services.

[5] *See* Securities Exchange Act Release No. 34–68143 (November 2, 2012), 77 FR 67053 (November 8, 2012) (SR–NYSE–2012–44). This provides qualifying issuers with nearly three months to select from the available services in their tier for the following calendar year as well as providing non-qualifying issuers with time to budget and plan for obtaining the service elsewhere.

[6] *See* Section 902.02 of the Manual.

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.[7] 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,[8] in general, and furthers the objectives of Sections 6(b)(4)[9] 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)[10] 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 or receive a higher tier of 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 last three months of a calendar year after the Exchange has made its eligibility determinations for the next calendar year. The Exchange believes that its proposal to continue offering Tier One or Tier Two services for one additional year to a company that became ineligible as a result of a corporate action undertaken in the fourth quarter does not unfairly discriminate between issuers. The Exchange believes this situation would occur very rarely and issuers in this situation would continue to receive services for only one additional year. The Exchange believes all issuers would benefit from knowing that their services would not be discontinued on short notice.

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 change simply clarifies how the Exchange will treat Tier One and Tier Two Eligible Current Listings who achieve that designation as a result of a corporate action completed after September 30, but prior to December 31 in a given year. As described above, except for a very small number of companies that may continue to receive services for an additional year despite losing eligibility in the fourth quarter, under the proposed rule change, all issuers that are similarly situated on January 1 will receive the same package of complimentary products and services and no issuer will be treated differently simply because it became a Tier One or Tier Two Eligible Current Listing in the final three months of the preceding year. The Exchange believes that its proposal that it continue to offer services for an additional year to companies that became ineligible during 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 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

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 operative 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 Act[11] 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.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), 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

[Release No. 34–79390; File No. SR–NYSE–2016–78]

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)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] 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

[13] 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.

[4] *See* Securities Exchange Act Release Nos. 78228 (July 5, 2016), 81 FR 44907 (July 11, 2016) (SR–NYSE–2016–24) (Approval Order) *and* 77491 (March 31, 2016), 81 FR 20030 (April 6, 2016) (SR–NYSE–2016–24) (''Opening Notice of Filing'') (''Opening Filing''). The Exchange implemented the changes described in the Opening Filing on September 12, 2016.