

companies listing Level 3 ADRs on Nasdaq are considered to be listing in connection with an initial public offering in the United States, and (iii) remove the monthly ownership analytics and event driven targeting tool from the list of available market advisory tools under IM-5900-7(a).

The Commission notes that Nasdaq's proposal to offer the Service Package to any companies listing ADRs or common stock through a direct listing is substantially similar to the rules of another exchange that were approved previously by the Commission as consistent with the Act after being published in the **Federal Register** for notice and comment.<sup>30</sup> In addition, the Commission notes that the other proposed amendments to Nasdaq's rules would enhance the transparency of IM-5900-7 and eliminate a service that is not used by any listed company. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>31</sup>

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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2019-040 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.

<sup>30</sup> See Securities Exchange Act Release No. 68143, note 6 *supra*.

<sup>31</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NASDAQ-2019-040. 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 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. 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-NASDAQ-2019-040, and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85961; File No. SR-NYSE-2019-30]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Listing Fee Schedule for Pre-Revenue Companies

May 29, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

<sup>32</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 16, 2019, 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 adopt a listing fee schedule specific to companies that have not generated any significant revenues at the time of their original listing. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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's Global Market Capitalization Test (as set forth in Section 102.01C of the Exchange's Listed Company Manual (the “Manual”)) allows the Exchange to list companies that have not yet recorded any significant revenues, provided the issuer has at least a \$200 million global market capitalization and meets the other requirements for listing. These companies are typically engaged in research and development (in many cases they are biotechnology companies focused on developing new drug candidates) or are in the early stages of commercialization of a product.

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Generally, a company of this kind relies primarily on the proceeds from its initial public offering to fund its operations. As such, the fees charged by the Exchange represent a more significant expense for these companies than they do for other newly-listed companies and in many cases these fees are an impediment to the Exchange in competing for the listing of these companies.

To address the issues described above, the Exchange proposes to amend Section 902.02 of the Manual to adopt a discounted annual fee schedule for newly-listed companies that list on or after June 1, 2019 and have not recorded in excess of \$5 million of revenue in either (i) the most recent completed fiscal year prior to listing or (ii) during the year of listing through the most recently completed fiscal quarter before the listing date (“Pre-Revenue Companies”).<sup>4</sup> The Annual Fees of any company that qualifies as a Pre-Revenue Company at the time of listing will be calculated quarterly for the fiscal quarter in which it lists and in each of the succeeding 12 full fiscal quarters, at a rate of one-fourth of the applicable Annual Fee rate. In addition, the total fees (including Listing Fees and Annual Fees, but excluding Listing Fees paid at the time of initial listing) that may be billed to such an issuer during this period will be subject to a \$25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. This fee cap is subject to the same exclusions as apply in relation to the \$500,000 per year fee cap described under “Total Maximum Fee Payable in a Calendar Year.” If there are one or more fiscal quarters remaining in the calendar year after the conclusion of the period described in this paragraph, the issuer will, on a prorated basis, be billed the regular Annual Fee subject to the \$500,000 total fee cap for the remainder of that calendar year.

The Exchange believes the proposed fee schedule for Pre-Revenue Companies is reasonable, as paying the Exchange’s fees is more burdensome for these early stage companies than it is for companies that generate significant revenues from operations. The Exchange believes that it is reasonable to apply the reduced fee level for a limited period, as Pre-Revenue Companies typically begin to generate significant revenues from operations within three years from the time of initial listing.

<sup>4</sup> The Exchange will rely on a company’s revenues as reported in its SEC filings for purposes of determining whether it qualifies as a Pre-Revenue Company.

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,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> 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,<sup>7</sup> 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 believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to adopt the proposed separate fee schedule for Pre-Revenue Companies, as those companies have limited resources and the Exchange’s fees are more burdensome for them than they are for companies that are generating significant revenues from operations.

### *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

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

proposed fee changes impose a burden on 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)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> 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)<sup>10</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2019-30 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-2019-30. 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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

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-2019-30 and should be submitted on or before June 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85958; File No. SR-NYSEARCA-2019-40]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-Location Services

May 29, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 21, 2019, NYSE Arca, Inc. ("NYSE Arca" 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 the NYSE Arca Options Fees and Charges (the "Options Fee Schedule") and the NYSE Arca Equities Fees and Charges (the "Equities Fee Schedule" and, together with the Options Fee Schedule, the "Fee Schedules") related to co-location services to update the description of the access to trading and execution systems provided with the purchase of access to the co-location local area networks. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 the Fee Schedules related to co-location<sup>4</sup> services offered by the Exchange to update the description of the access to trading and execution services and connectivity to data provided to Users<sup>5</sup>

<sup>4</sup> The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

<sup>5</sup> For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act

with connections to the Liquidity Center Network ("LCN") and internet protocol ("IP") network, local area networks available in the data center.

To implement the changes, the Exchange proposes to amend paragraph one of General Note 4, which describes the access to trading and execution systems which a User receives when it purchases access to the LCN or IP network.<sup>6</sup>

The Exchange will announce the implementation date through a customer notice.

As set forth in the first paragraph of General Note 4, when a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the Exchange and the SRO Affiliates (together, the "Exchange Systems"), provided the User has authorization from the Exchange or relevant Affiliate SRO.<sup>7</sup> The Exchange proposes to revise such paragraph to reflect that a User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of Global OTC ("Global OTC System"), subject to authorization by Global OTC.

In order to obtain access to the Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User any applicable fees charged to its subscribers by Global OTC. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.

The Exchange provides Users access to the Global OTC System and the Exchange Systems ("Access") as a convenience to Users. Use of Access is completely voluntary. The Exchange is not aware of any impediment to third

Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC ("NYSE"), NYSE American LLC ("NYSE American"), and NYSE National, Inc. ("NYSE National" and, together with NYSE, NYSE American and NYSE Chicago, Inc., the "Affiliate SROs"). See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80).

<sup>6</sup> See Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR-NYSEArca-2016-172) (notice of filing and immediate effectiveness of proposed rule change amending the Exchange's Fee Schedules related to co-location services to increase LCN and IP network fees and add a description of access to trading and execution services and connectivity to Included Data Products).

<sup>7</sup> See id.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.