

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="24"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="18"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by NYSE MKT LLC.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend Section 140 of the NYSE MKT LLC Company Guide

Contact Information
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="John"/>	Last Name * <input type="text" value="Carey"/>
Title * <input type="text" value="Vice President - Legal"/>	
E-mail * <input type="text" value="jcarey@nyx.com"/>	
Telephone * <input type="text" value="(212) 656-5640"/>	Fax <input type="text" value="(212) 656-2223"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date <input type="text" value="02/25/2013"/>	Corporate Secretary <input type="text"/>
By <input type="text" value="Janet McGinness"/>	<input type="text"/>
(Name *)	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Janet McGinness, jmcginness@nyx.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² NYSE MKT LLC (“NYSE MKT” or the “Exchange”) proposes to amend Section 140 of the NYSE MKT Company Guide (the “Company Guide”) to specify how the Initial Application Fee is treated for (i) an issuer that, after paying such fee to the Exchange, lists a security on New York Stock Exchange LLC (“NYSE”) instead of on the Exchange, (ii) an issuer that makes contemporaneous applications to list on both the Exchange and NYSE, and (iii) certain issuers that do not immediately list a security for which they already paid an Initial Application Fee. In addition to the substantive changes proposed herein, the Exchange also proposes to make a non-substantive change to Section 140. The Exchange proposes to implement the fee changes immediately upon filing.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

John Carey
Vice President – Legal
NYSE Regulation, Inc.
(212) 656-5640

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to amend Section 140 of the Company Guide to specify how the Initial Application Fee is treated for (i) an issuer that, after paying such fee to the Exchange, lists a security on NYSE (which is under common ownership with the Exchange) instead of on the Exchange, (ii) an issuer that makes contemporaneous applications to list on both the Exchange and NYSE,³ and (iii) certain issuers that do not immediately list a security for which they already paid an Initial Application Fee. In addition to the substantive changes proposed herein, the Exchange also proposes to make a non-substantive change to Section 140. The Exchange proposes to implement the fee changes immediately upon filing.

Background

Section 140 of the Company Guide provides for an Initial Application Fee of \$5,000 that is charged to an issuer that applies to list certain securities on the Exchange.⁴

An issuer applying to list a security on the Exchange is subject to a preliminary confidential review by NYSE Regulation, Inc. (“NYSER”), in which NYSER determines the issuer’s qualification for listing. As set forth in Section 201 of the Company Guide, if NYSER determines in connection with this preliminary confidential review that the issuer is qualified for listing, the issuer is informed that it has been cleared as eligible to list and that the Exchange will accept a formal Original Listing Application from the issuer. It is the Exchange’s practice to notify the issuer of its eligibility clearance and the conditions to its listing by means of a letter (the “pre-clearance” letter).

For an issuer subject to the Initial Application Fee, payment of the Initial Application Fee is a prior condition to eligibility clearance being granted. As a practical matter, the Exchange anticipates that an issuer would pay the Initial Application Fee after NYSER has completed its preliminary confidential review and has determined that the issuer is eligible to submit a formal Original Listing Application, but before the “pre-clearance” letter has been issued. Typically, the Exchange is in contact with an issuer prior to the issuance of a “pre-clearance”

³ Although ultimately an issuer will list on only one of the two exchanges, applying to both exchanges may be prudent in certain circumstances, including, for instance, when an issuer will not know which exchange it qualifies for until the proceeds from its initial public offering are known.

⁴ See Securities Exchange Act Release No. 68469 (December 19, 2012), 77 FR 76158 (December 26, 2012) (SR-NYSEMKT-2012-70). Certain issuers are not required to pay an Initial Application Fee. See Section 140.

letter and provides oral confirmation of the issuer's eligibility clearance prior to the issuance of the "pre-clearance" letter.

The Initial Application Fee is applied toward the applicable Original Listing Fees for an issuer that lists on the Exchange. If an issuer pays an Initial Application Fee in connection with the application to list a security but does not immediately list such security, the issuer is not required to pay an additional Initial Application Fee if it subsequently lists such security, so long as (i) the issuer has a registration statement regarding such security on file with the Commission, or, (ii) if the issuer has withdrawn its registration statement, the issuer refiles a registration statement regarding such security within 12 months of the date of such withdrawal.

The Initial Application Fee is non-refundable. It is designed to allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange, and to provide a disincentive for impractical applications by issuers.⁵

Reciprocity with NYSE

Certain issuers that may qualify for listing on the Exchange may ultimately apply to list instead on NYSE, which charges an Initial Application Fee of \$20,000.⁶ In addition, certain issuers may wish to make contemporaneous applications to list on both the Exchange and NYSE. An issuer applying to list a security on NYSE is subject to a preliminary confidential review by NYSE that is substantially similar to the process for NYSE MKT.

Although the Exchange intends that the Initial Application Fee will disincent impractical applications, the Exchange does not wish to discourage an issuer that may reasonably qualify for both markets from (i) initially pursuing an NYSE MKT listing, but ultimately choosing to list on NYSE, or (ii) making contemporaneous applications to list on both the Exchange and NYSE. The Exchange also does not want to create a financial disincentive in such situations by requiring such issuers to pay Initial Application Fees to both markets. As such, the Exchange proposes that when an issuer pays an Initial Application Fee to NYSE MKT but then lists on NYSE, the Initial Application Fee paid to the Exchange by such issuer would be applied toward the NYSE Initial Application Fee and applicable Listing Fees. In addition, an issuer making contemporaneous

⁵ See Securities Exchange Act Release No. 68469 (December 19, 2012), 77 FR 76158 (December 26, 2012) (SR-NYSEMKT-2012-70).

⁶ See Section 902.03 of the NYSE Listed Company Manual and Securities Exchange Act Release No. 68470 (December 19, 2012), 77 FR 76116 (December 26, 2012) (SR-NYSE-2012-68).

applications to NYSE and NYSE MKT will be charged a single Initial Application Fee of \$25,000 for both applications, which will be applied to the applicable listing fees the issuer must pay to the exchange on which it ultimately lists.⁷

The Exchange notes that NYSE has submitted a similar proposal⁸ so that if an issuer pays the NYSE Initial Application Fee but lists on the NYSE MKT, such fee would be applied toward the NYSE MKT's Initial Application Fee and the \$20,000 difference would apply toward applicable NYSE MKT Original Listing Fees. The result of the two proposed rule changes is to remove any financial penalty for an issuer initiating the listing process on NYSE MKT, but subsequently choosing to list on NYSE, or vice versa. Similarly, the NYSE proposal provides that an issuer making contemporaneous applications to NYSE and NYSE MKT will be charged a single Initial Application Fee of \$25,000 for both applications, which will be applied to the applicable listing fees the issuer must pay to the exchange on which it ultimately lists.

Emerging Growth Companies and Foreign Private Issuers

As noted above, if an issuer pays an Initial Application Fee in connection with the application to list a security but does not immediately list such security, the issuer is not required to pay an additional Initial Application Fee if it subsequently lists such security, so long as:

- (i) the issuer has a registration statement regarding such security on file with the Commission, or,
- (ii) if the issuer withdrew its registration statement, the issuer refiled a registration statement regarding such security within 12 months of the date of such withdrawal.

The Exchange proposes to amend Section 140 of the Company Guide to add two additional circumstances in which an issuer will not be required to pay a subsequent Initial Application Fee, in order to address issuers that do not file a publicly-available registration statement with the Commission. Specifically, pursuant to Section 6(e) of the Securities Act of 1933 (the "Securities Act"),⁹ an "emerging growth company" (as defined in Section 2(a)(19) of the Securities

⁷ Specifically, if the issuer lists on the Exchange, the Initial Application Fee will be applied toward the Original Listing Fees, and if the issuer lists on NYSE, it will be applied toward the NYSE Initial Application Fee and applicable Listing Fees.

⁸ See SR-NYSE-2013-18.

⁹ 15 U.S.C. 77f(e). See Section 106 of the Jumpstart Our Business Startups Act (the "JOBS Act"), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf>.

Act¹⁰ and Section 3(a)(80) of the Act¹¹) may submit a draft registration statement to the Commission for confidential, nonpublic review. Additionally, a foreign private issuer (as defined in Rule 3b-4(c) under the Act¹²) is also eligible to submit a draft registration statement as an emerging growth company or pursuant to a nonpublic submission policy of the Commission's Division of Corporation Finance.¹³

The Exchange proposes to add two additional provisions that specify that, if an issuer pays an Initial Application Fee in connection with the application to list a security but does not immediately list such security, and the issuer is an emerging growth company and/or foreign private issuer and has submitted a draft registration statement to the Commission for confidential, nonpublic review pursuant to Section 6(e) of the Securities Act or the foreign issuer nonpublic submission policy of the Commission's Division of Corporation Finance, the issuer will not be required to pay an additional Initial Application Fee if it subsequently lists a security, so long as:

- (i) such submission has not lapsed or been abandoned;¹⁴ or
- (ii) if the confidential, nonpublic draft registration statement has lapsed or been abandoned, within 12 months of the date of such lapse or abandonment such issuer resubmits a confidential,

¹⁰ 15 U.S.C. 77b(a)(19).

¹¹ 15 U.S.C. 78c(a)(80).

¹² 17 CFR 240.3b-4(c).

¹³ The policy is available at <http://www.sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm>.

¹⁴ The Exchange understands that a draft registration statement submitted to the Commission by an emerging growth company and/or foreign private issuer for confidential, nonpublic review pursuant to Section 6(e) of the Securities Act or the foreign issuer nonpublic submission policy of the Commission's Division of Corporation Finance will be deemed by the Commission to have lapsed and or been abandoned after a certain period of time if, for example, the issuer has not provided an indication that it intends on taking any further action with respect to such submission (e.g., if there is no indication that the issuer is actively pursuing a formal, publicly-available registration statement). For purposes of the Initial Application Fee, the Exchange proposes to specify that it will consider a confidential, nonpublic draft registration statement to have lapsed or been abandoned if the issuer has not submitted to the Commission through the Commission's electronic submission system for a period of 120 consecutive days either (i) a draft registration statement or (ii) correspondence addressed to the Commission related to the draft registration statement.

nonpublic draft registration statement regarding such security or publicly files a registration statement regarding such security.

Non-Substantive Change

In addition to the substantive changes proposed herein, the Exchange also proposes a non-substantive change to remove obsolete text from Section 140 of the Company Guide stating that the Initial Application Fee became effective January 1, 2013.

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding Initial Application Fees and that the Exchange is not aware of any problems that issuers would have in complying with the proposed change.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Generally, the Exchange believes that the proposed change is reasonable because it will result in greater specificity for issuers considering listing a security on the Exchange. For example, the proposed change is reasonable because it will address how the Initial Application Fee will be treated for an issuer that (i) after paying such fee to the Exchange, decides to list its security on NYSE, or (ii) chooses to apply contemporaneously to both the Exchange and NYSE. In this regard, the proposed change is also reasonable because an issuer that may reasonably qualify for both markets will not be discouraged from (i) initially pursuing an NYSE MKT listing, but ultimately choosing an NYSE listing, or (ii) making contemporaneous applications to both the Exchange and NYSE, which could otherwise be the case if such issuer is required to pay Initial Application Fees to both markets. The Exchange also believes that the proposed change is reasonable because it will address how the Initial Application Fee will be treated for an issuer that submits a confidential, nonpublic draft registration statement to the Commission for review but does not immediately list the security, for which it has paid an Initial Application Fee. In this regard, the proposed change is reasonable because it would extend the existing treatment for an issuer of a security for which a public registration statement is filed, such that the same

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

general treatment is applicable to an issuer that submits a confidential, nonpublic draft registration statement.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will prevent an issuer that has already paid an Initial Application Fee to the Exchange, but decides to list its security on NYSE, or that chooses to apply to list contemporaneously with both the Exchange and NYSE, from being required to pay duplicative fees without significant additional work being required of or performed by NYSE. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it will maintain the effectiveness of an already-paid Initial Application Fee for an issuer that submits a confidential, nonpublic draft registration statement to the Commission for review, but does not immediately list the security, on the same general terms as is currently applicable to an issuer that publicly files its registration statement.

The Exchange believes that the proposed non-substantive change is reasonable because it will ensure that the description of the Initial Application Fee is clear and accurate. This change is also equitable and not unfairly discriminatory because it will benefit all issuers and all other readers of the Company Guide.

4. 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 is designed to specify how the Initial Application Fee is treated for certain issuers of securities on the Exchange, and to promote competition by removing a potential financial disincentive by not requiring an issuer that may reasonably qualify for listing on both the Exchange and NYSE to pay Initial Application Fees to both markets if it (i) initially pursues an NYSE MKT listing, but ultimately chooses to list on NYSE, or (ii) makes contemporaneous applications to list on both NYSE MKT and NYSE.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change is effective upon filing pursuant to Section

19(b)(3)(A)(ii) of the Act¹⁷ 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)¹⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Amendment to the Company Guide

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 15 U.S.C v. 78s(b)(2)(B).

SECURITIES AND EXCHANGE COMMISSION
 (Release No. 34- ; File No. SR-NYSEMKT-2013-18)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 140 of the NYSE MKT LLC Company Guide

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, 2013, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 amend Section 140 of the NYSE MKT Company Guide (the “Company Guide”) to specify how the Initial Application Fee is treated for (i) an issuer that, after paying such fee to the Exchange, lists a security on New York Stock Exchange LLC (“NYSE”) instead of on the Exchange, (ii) an issuer that makes contemporaneous applications to list on both the Exchange and NYSE, and (iii) certain issuers that do not immediately list a security for which they already paid an Initial Application Fee. The text of the proposed rule change is available on the Exchange’s

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

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 Section 140 of the Company Guide to specify how the Initial Application Fee is treated for (i) an issuer that, after paying such fee to the Exchange, lists a security on NYSE (which is under common ownership with the Exchange) instead of on the Exchange, (ii) an issuer that makes contemporaneous applications to list on both the Exchange and NYSE,⁴ and (iii) certain issuers that do not immediately list a security for which they already paid an Initial Application Fee. In addition to the substantive changes proposed herein, the Exchange also proposes to make a non-substantive change to Section 140. The Exchange proposes to implement the fee changes immediately upon filing.

⁴ Although ultimately an issuer will list on only one of the two exchanges, applying to both exchanges may be prudent in certain circumstances, including, for instance, when an issuer will not know which exchange it qualifies for until the proceeds from its initial public offering are known.

Background

Section 140 of the Company Guide provides for an Initial Application Fee of \$5,000 that is charged to an issuer that applies to list certain securities on the Exchange.⁵

An issuer applying to list a security on the Exchange is subject to a preliminary confidential review by NYSE Regulation, Inc. (“NYSER”), in which NYSER determines the issuer’s qualification for listing. As set forth in Section 201 of the Company Guide, if NYSER determines in connection with this preliminary confidential review that the issuer is qualified for listing, the issuer is informed that it has been cleared as eligible to list and that the Exchange will accept a formal Original Listing Application from the issuer. It is the Exchange’s practice to notify the issuer of its eligibility clearance and the conditions to its listing by means of a letter (the “pre-clearance” letter).

For an issuer subject to the Initial Application Fee, payment of the Initial Application Fee is a prior condition to eligibility clearance being granted. As a practical matter, the Exchange anticipates that an issuer would pay the Initial Application Fee after NYSER has completed its preliminary confidential review and has determined that the issuer is eligible to submit a formal Original Listing Application, but before the “pre-clearance” letter has been issued. Typically, the Exchange is in contact with an issuer prior to the issuance of a “pre-clearance” letter and provides oral confirmation of the issuer’s eligibility clearance prior to the issuance of the “pre-clearance” letter.

The Initial Application Fee is applied toward the applicable Original Listing Fees for an issuer that lists on the Exchange. If an issuer pays an Initial Application

⁵ See Securities Exchange Act Release No. 68469 (December 19, 2012), 77 FR 76158 (December 26, 2012) (SR-NYSEMKT-2012-70). Certain issuers are not required to pay an Initial Application Fee. See Section 140.

Fee in connection with the application to list a security but does not immediately list such security, the issuer is not required to pay an additional Initial Application Fee if it subsequently lists such security, so long as (i) the issuer has a registration statement regarding such security on file with the Commission, or, (ii) if the issuer has withdrawn its registration statement, the issuer refiles a registration statement regarding such security within 12 months of the date of such withdrawal.

The Initial Application Fee is non-refundable. It is designed to allow the Exchange to recover, in part, the costs associated with processing and evaluating an issuer's application, irrespective of whether the relevant issuance qualifies for listing or whether such issuer decides to list on the Exchange, and to provide a disincentive for impractical applications by issuers.⁶

Reciprocity with NYSE

Certain issuers that may qualify for listing on the Exchange may ultimately apply to list instead on NYSE, which charges an Initial Application Fee of \$20,000.⁷ In addition, certain issuers may wish to make contemporaneous applications to list on both the Exchange and NYSE. An issuer applying to list a security on NYSE is subject to a preliminary confidential review by NYSE that is substantially similar to the process for NYSE MKT.

Although the Exchange intends that the Initial Application Fee will disincent impractical applications, the Exchange does not wish to discourage an issuer that may

⁶ See Securities Exchange Act Release No. 68469 (December 19, 2012), 77 FR 76158 (December 26, 2012) (SR-NYSEMKT-2012-70).

⁷ See Section 902.03 of the NYSE Listed Company Manual and Securities Exchange Act Release No. 68470 (December 19, 2012), 77 FR 76116 (December 26, 2012) (SR-NYSE-2012-68)

reasonably qualify for both markets from (i) initially pursuing an NYSE MKT listing, but ultimately choosing to list on NYSE, or (ii) making contemporaneous applications to list on both the Exchange and NYSE. The Exchange also does not want to create a financial disincentive in such situations by requiring such issuers to pay Initial Application Fees to both markets. As such, the Exchange proposes that when an issuer pays an Initial Application Fee to NYSE MKT but then lists on NYSE, the Initial Application Fee paid to the Exchange by such issuer would be applied toward the NYSE Initial Application Fee and applicable Listing Fees. In addition, an issuer making contemporaneous applications to NYSE and NYSE MKT will be charged a single Initial Application Fee of \$25,000 for both applications, which will be applied to the applicable listing fees the issuer must pay to the exchange on which it ultimately lists.⁸

The Exchange notes that NYSE has submitted a similar proposal⁹ so that if an issuer pays the NYSE Initial Application Fee but lists on the NYSE MKT, such fee would be applied toward the NYSE MKT's Initial Application Fee and the \$20,000 difference would apply toward applicable NYSE MKT Original Listing Fees. The result of the two proposed rule changes is to remove any financial penalty for an issuer initiating the listing process on NYSE MKT, but subsequently choosing to list on NYSE, or vice versa. Similarly, the NYSE proposal provides that an issuer making contemporaneous applications to NYSE and NYSE MKT will be charged a single Initial Application Fee of \$25,000 for both applications, which will be applied to the applicable

⁸ Specifically, if the issuer lists on the Exchange, the Initial Application Fee will be applied toward the Original Listing Fees, and if the issuer lists on NYSE, it will be applied toward the NYSE Initial Application Fee and applicable Listing Fees.

⁹ See SR-NYSE-2013-18.

listing fees the issuer must pay to the exchange on which it ultimately lists.

Emerging Growth Companies and Foreign Private Issuers

As noted above, if an issuer pays an Initial Application Fee in connection with the application to list a security but does not immediately list such security, the issuer is not required to pay an additional Initial Application Fee if it subsequently lists such security, so long as:

- (i) the issuer has a registration statement regarding such security on file with the Commission, or,
- (ii) if the issuer withdrew its registration statement, the issuer refiled a registration statement regarding such security within 12 months of the date of such withdrawal.

The Exchange proposes to amend Section 140 of the Company Guide to add two additional circumstances in which an issuer will not be required to pay a subsequent Initial Application Fee, in order to address issuers that do not file a publicly-available registration statement with the Commission. Specifically, pursuant to Section 6(e) of the Securities Act of 1933 (the “Securities Act”),¹⁰ an “emerging growth company” (as defined in Section 2(a)(19) of the Securities Act¹¹ and Section 3(a)(80) of the Act¹²) may submit a draft registration statement to the Commission for confidential, nonpublic review. Additionally, a foreign private issuer (as defined in Rule 3b-4(c) under the Act¹³)

¹⁰ 15 U.S.C. 77f(e). See Section 106 of the Jumpstart Our Business Startups Act (the “JOBS Act”), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf>.

¹¹ 15 U.S.C. 77b(a)(19).

¹² 15 U.S.C. 78c(a)(80).

¹³ 17 CFR 240.3b-4(c).

is also eligible to submit a draft registration statement as an emerging growth company or pursuant to a nonpublic submission policy of the Commission's Division of Corporation Finance.¹⁴

The Exchange proposes to add two additional provisions that specify that, if an issuer pays an Initial Application Fee in connection with the application to list a security but does not immediately list such security, and the issuer is an emerging growth company and/or foreign private issuer and has submitted a draft registration statement to the Commission for confidential, nonpublic review pursuant to Section 6(e) of the Securities Act or the foreign issuer nonpublic submission policy of the Commission's Division of Corporation Finance, the issuer will not be required to pay an additional Initial Application Fee if it subsequently lists a security, so long as:

- (i) such submission has not lapsed or been abandoned;¹⁵ or
- (ii) if the confidential, nonpublic draft registration statement has lapsed or been abandoned, within 12 months of the date of such

¹⁴ The policy is available at <http://www.sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm>.

¹⁵ The Exchange understands that a draft registration statement submitted to the Commission by an emerging growth company and/or foreign private issuer for confidential, nonpublic review pursuant to Section 6(e) of the Securities Act or the foreign issuer nonpublic submission policy of the Commission's Division of Corporation Finance will be deemed by the Commission to have lapsed and or been abandoned after a certain period of time if, for example, the issuer has not provided an indication that it intends on taking any further action with respect to such submission (e.g., if there is no indication that the issuer is actively pursuing a formal, publicly-available registration statement). For purposes of the Initial Application Fee, the Exchange proposes to specify that it will consider a confidential, nonpublic draft registration statement to have lapsed or been abandoned if the issuer has not submitted to the Commission through the Commission's electronic submission system for a period of 120 consecutive days either (i) a draft registration statement or (ii) correspondence addressed to the Commission related to the draft registration statement.

lapse or abandonment such issuer resubmits a confidential, nonpublic draft registration statement regarding such security or publicly files a registration statement regarding such security.

Non-Substantive Change

In addition to the substantive changes proposed herein, the Exchange also proposes a non-substantive change to remove obsolete text from Section 140 of the Company Guide stating that the Initial Application Fee became effective January 1, 2013.

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding Initial Application Fees and that the Exchange is not aware of any problems that issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Generally, the Exchange believes that the proposed change is reasonable because it will result in greater specificity for issuers considering listing a security on the Exchange. For example, the proposed change is reasonable because it will address how the Initial Application Fee will be treated for an issuer that (i) after paying such fee to the

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

Exchange, decides to list its security on NYSE, or (ii) chooses to apply contemporaneously to both the Exchange and NYSE. In this regard, the proposed change is also reasonable because an issuer that may reasonably qualify for both markets will not be discouraged from (i) initially pursuing an NYSE MKT listing, but ultimately choosing an NYSE listing, or (ii) making contemporaneous applications to both the Exchange and NYSE, which could otherwise be the case if such issuer is required to pay Initial Application Fees to both markets. The Exchange also believes that the proposed change is reasonable because it will address how the Initial Application Fee will be treated for an issuer that submits a confidential, nonpublic draft registration statement to the Commission for review but does not immediately list the security, for which it has paid an Initial Application Fee. In this regard, the proposed change is reasonable because it would extend the existing treatment for an issuer of a security for which a public registration statement is filed, such that the same general treatment is applicable to an issuer that submits a confidential, nonpublic draft registration statement.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will prevent an issuer that has already paid an Initial Application Fee to the Exchange, but decides to list its security on NYSE, or that chooses to apply to list contemporaneously with both the Exchange and NYSE, from being required to pay duplicative fees without significant additional work being required of or performed by NYSE. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it will maintain the effectiveness of an already-paid Initial Application Fee for an issuer that submits a confidential, nonpublic draft registration statement to the Commission for review, but does not immediately list the

security, on the same general terms as is currently applicable to an issuer that publicly files its registration statement.

The Exchange believes that the proposed non-substantive change is reasonable because it will ensure that the description of the Initial Application Fee is clear and accurate. This change is also equitable and not unfairly discriminatory because it will benefit all issuers and all other readers of the Company Guide.

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 is designed to specify how the Initial Application Fee is treated for certain issuers of securities on the Exchange, and to promote competition by removing a potential financial disincentive by not requiring an issuer that may reasonably qualify for listing on both the Exchange and NYSE to pay Initial Application Fees to both markets if it (i) initially pursues an NYSE MKT listing, but ultimately chooses to list on NYSE, or (ii) makes contemporaneous applications to list on both NYSE MKT and NYSE.

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)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

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)²⁰ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2013-18 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2013-18. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-NYSEMKT-2013-18 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).

Additions underscored
 Deletions [bracketed]

NYSE MKT Company Guide

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Sec. 140. ORIGINAL LISTING FEES

Stock Issues

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[Effective January 1, 2013, a]An issuer shall be required to pay an Initial Application Fee of \$5,000 in connection with applying to list shares of common or preferred stock or common stock equivalents on the Exchange, including securities issued by non-U.S. companies, except that an issuer:

- (i) applying to transfer from a national securities exchange to list exclusively on the Exchange; or
- (ii) applying to list on the Exchange that is already listed on any other national securities exchange

shall not be required to pay an Initial Application Fee in connection with the application for such listing or dual listing.

An issuer that is required to pay the Initial Application Fee shall pay such fee prior to receipt of eligibility clearance to list an equity security on the Exchange pursuant to the confidential pre-application eligibility review in §201. Payment of the Initial Application Fee, when required, is a prior condition to eligibility clearance being granted to list shares of common or preferred stock or common stock equivalents on the Exchange.

The Initial Application Fee is non-refundable and shall be applied towards applicable Original Listing Fees.

An issuer that applies contemporaneously to list on both the Exchange and the New York Stock Exchange (“NYSE”) shall be charged a single Initial Application Fee of \$25,000 for both applications and such Initial Application Fee shall be applied toward listing fees payable to either the Exchange or NYSE, as applicable, if the issuer lists on either exchange.

If an issuer pays an Initial Application Fee in connection with the application to list a common or preferred stock or common stock equivalent but does not immediately list such security, the issuer shall not be required to pay a subsequent Initial Application Fee if it later lists such security so long as:

- (i) the issuer has a registration statement regarding such security on file with the Commission; [.,or,]
- (ii) if the issuer withdraws its registration statement, the issuer refiles a registration statement regarding such security within 12 months of the date of such withdrawal[.]; or
- (iii) if the issuer is an emerging growth company (as defined in Section 2(a)(19) of the Securities Act and Section 3(a)(80) of the Exchange Act) and/or a foreign private issuer (as defined in Rule 3b-4(c) under the Exchange Act) and has submitted a confidential, nonpublic draft registration statement to the Commission pursuant to Section 6(e) of the Securities Act or the foreign issuer nonpublic submission policy of the Commission's Division of Corporation Finance:
 - (a) such submission has not lapsed or been abandoned; or
 - (b) if the confidential, nonpublic draft registration statement has lapsed or been abandoned, within 12 months of the date of such lapse or abandonment the issuer resubmits a confidential, nonpublic draft registration statement regarding such security or publicly files a registration statement regarding such security.

For purposes of the Initial Application Fee, the Exchange shall consider a confidential, nonpublic draft registration statement to have lapsed or been abandoned if the issuer has not submitted to the Commission through the Commission's electronic submission system for a period of 120 consecutive days either (i) a draft registration statement or (ii) correspondence addressed to the Commission related to the draft registration statement.

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