Tier One and Tier Two services, providing such issuers with additional time to plan and budget accordingly. The Exchange also believes that stating in the text of Section 907.00 that (i) the measurement of shares of an equity security for non-U.S. companies is limited to shares issued and outstanding in the U.S., and (ii) the Exchange will determine global market value for newly listed issuers that do not conduct a public offering in connection with the listing would provide greater clarity in the Exchange's rules, and as such is reasonable.

With respect to the change to Tier A, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to offer market surveillance products and services throughout the 24-month period following listing, rather than just the initial 12 months, in order to eliminate the interruption in service that would otherwise occur for issuers that would qualify for Tier One status as existing issuers at the end of the 24-month period.

The Exchange further notes that the proposed rule change is equitable and not unfairly discriminatory because the criteria for satisfying the tiers are the same for all similarly situated issuers. Issuers are not forced or required to utilize the complimentary products and services as a condition of listing. All issuers will continue to receive some level of free services.

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.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–44. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between 10 a.m. and 3 p.m.. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site 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–NYSE–2012–44 and should be submitted on or before October 9, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22963 Filed 9–17–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67847; File No. SR–NYSE–2012–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 902.02 and 902.03 of the Listed Company Manual of the New York Stock Exchange LLC

September 12, 2012.

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 August 30, 2012, 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 amend Sections 902.02 and 902.03 of the Listed Company Manual (the ''Manual'') to provide that, where both of the companies that form an umbrella partnership real estate investment trust (''UPREIT'') structure are listed on the Exchange, Listing and Annual Fees for the two related listed issuers will be subject to a single fee cap at the time of original listing and on an annual basis. The text of 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.

[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.

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 Sections 902.02 and 902.03 of the Manual to provide that, where both of the companies that form an UPREIT structure are listed on the Exchange, Listing and Annual Fees for the two related listed companies will be subject to a single fee cap at the time of original listing and on an annual basis.

Many listed real estate investment trusts (''REITs'') form part of what is known as an ''umbrella partnership real estate investment trust'' or ''UPREIT'' structure.[4] In connection with the creation of an UPREIT structure, the owners of a portfolio of real estate assets contribute those assets to a limited partnership (the ''Operating Partnership'') in exchange for common equity interests in the Operating Partnership (''OP Units''). The sole general partner of the Operating Partnership is an entity which elects to be taxed as a real estate investment trust (the ''REIT''). The partnership agreement of the Operating Partnership grants the REIT (as general partner) sole control over the Operating Partnership and, consequently, the Operating Partnership has no board of directors. In addition, the Operating Partnership has no employees of its own and its operations are managed entirely by the management and employees of the REIT. In conjunction with the contribution of the initial portfolio of real estate assets, the REIT typically raises additional capital in an initial public offering.[5] In exchange for contributing the proceeds of the IPO and any subsequent offerings to the Operating Partnership, the REIT receives a number of OP Units corresponding to the number of shares sold by the REIT itself. Shareholders of the REIT receive exactly the same cash dividends as are paid to OP Unit holders, as the REIT passes through to its own shareholders the dividends it receives in relation to the OP Units it owns. After a specified period of time (typically one year after the IPO), the limited partners have the ability at any time to require the REIT to redeem their OP Units for a cash amount equal to the then market price of the REIT's common stock, subject to the REIT's right to satisfy that redemption requirement by issuing shares of its own common stock on a one-for-one basis in exchange for the OP Units.[6]

As is apparent from the above description, OP Units and shares of common stock of the REIT effectively have the same economic rights. Each OP Unit represents the same proportionate share in the assets of the Operating Partnership as a corresponding common share of the REIT and is exchangeable for either a share of the REIT or an amount in cash equal to the market value of a share of the REIT. It is the Exchange's understanding that the securities industry typically views the Operating Partnership as the relevant entity for analysis rather than the REIT, as the common stock of the REIT effectively functions as an indirect means of owning an equity interest in the overall enterprise represented by the Operating Partnership.

The question as to how the Exchange should treat the REIT and the Operating Partnership components of an UPREIT for fee purposes when both are listed companies has not previously arisen. One reason for this is that typically the Operating Partnership has very few direct investors and would therefore not qualify for listing. However, the possibility that both the REIT and the Operating Partnership might both be listed is not precluded by Exchange rules.[7]

The Exchange believes that the REIT and the Operating Partnership in an UPREIT structure are effectively a single entity, as they represent economic interests in the same enterprise and have a single management and board of directors, with the Operating Partnership relying entirely on the REIT for its management and corporate governance. Consequently, there are significant efficiencies for the Exchange in the listing and regulation of the two listed entities that constitute an UPREIT structure. In particular, the Exchange notes that a significant proportion of the regulatory cost it incurs in connection with the initial and continued listing of an issuer relates to the review by NYSE Regulation staff of the issuer's compliance with the board composition and board committee requirements set forth in Section 303A of the Manual.[8] As a limited partnership, the Operating Partnership component of an UPREIT structure is exempt from the Exchange's board and committee requirements with the exception of Section 303A.06, which requires the Operating Partnership to

[4] While the terms ''umbrella partnership real estate investment trust'' and ''UPREIT'' are not defined in the Internal Revenue Code, those terms are generally used to describe the specific structure set forth in Treas. Reg. § 1.701–2(d), ex. 4. (''Example 4''). For purposes of this rule filing and the proposed amendments, the Exchange uses those terms solely to describe a structure which is consistent with the structure described in Example 4 to a degree sufficient to qualify for the tax treatment described in Example 4 as in effect on the date of this filing (or any successor provision in the Internal Revenue Code which describes a structure which is materially identical to the structure described in Example 4).

[5] A pre-existing REIT may also enter into an UPREIT structure, generally by contributing its assets to a new Operating Partnership in exchange for interests in the Operating Partnership and in conjunction with the contribution of real estate assets by third parties in exchange for OP Units. The Operating Partnership of an UPREIT structure can acquire additional portfolios of real estate assets in exchange for OP Units at any time after its inception.

[6] Generally, the REIT will elect to satisfy all redemption requests by issuing its own stock rather than by making cash payments.

[7] The Exchange has a significant number of listed limited partnerships which are listed under the initial listing standards for operating companies set forth in Section 102.01 of the Manual. As such, subject to compliance with all applicable listing requirements, the Operating Partnership component of an UPREIT could list under the existing listing standards for operating companies set forth in Section 102.01. As the Operating Partnership is not itself a REIT, it could not list under the REIT listing standard set forth in Section 102.05.

[8] The Exchange also incurs regulatory costs in reviewing compliance by listed issuers with the Exchange's initial and continued financial listing standards, which largely consists of a review of the issuer's financial statements. The Exchange believes that there would also be regulatory efficiencies in conducting financial compliance reviews of UPREITs, as the financial statements of the two entities are directly related, in that the REIT's financial statements simply represent its percentage ownership interest in the Operating Partnership. In particular, the Exchange notes that because the two entities' financial condition is directly interrelated, any significant deterioration in the financial condition or stock price of either issuer which causes that issuer to fall below compliance with the Exchange's financial listing standards would likely also cause the same compliance problem for the other issuer. As a consequence, if both the REIT and the Operating Partnership fall below compliance with the Exchange's ongoing financial listing standards, any compliance plan submissions would be virtually identical and therefore the NYSE Regulation staff's review, approval and ongoing monitoring of such plans would require substantially fewer resources than would normally be the case for two independent companies. Similarly, the Exchange believes that non-regulatory efficiencies would exist, as the Exchange's listings client service group, which communicates with listed issuers on a regular basis, would interact with one management team instead of two.

have an independent audit committee as required by SEC Rule 10A–3, and the additional audit committee requirements in Section 303A.07. As the Operating Partnership is controlled by the REIT in its capacity as general partner, the Operating Partnership is able to rely on the audit committee of the REIT's board for its compliance with Sections 303A.06 and 303A.07.[9] Consequently, for all practical purposes, NYSE Regulation staff can rely on their corporate governance compliance reviews of the REIT as a means of effectively monitoring the Operating Partnership's compliance.[10] The Exchange believes it is appropriate to recognize these cost efficiencies by providing some limited relief from its initial and annual listing fees to the two issuers that form an UPREIT structure if both are listed on the Exchange. Section 902.03 of the Manual provides that the minimum and maximum initial listing fees the first time an issuer lists a class of common shares are $125,000 and $250,000, respectively. The Exchange proposes to amend Section 902.03 to provide that, when the REIT and the Operating Partnership components of an UPREIT structure list at the same time, these minimum and maximum fee amounts will be applied to the aggregate fees payable by both issuers. In cases where the fees payable by the REIT and Operating Partnership components of an UPREIT are determined based on either the minimum or maximum fee levels, the fees will be allocated between the two issuers based on the percentage of the total outstanding OP Units represented by the OP Units owned by the REIT. In addition, the Exchange proposes to treat the REIT and Operating Partnership components of an UPREIT as a single issuer when applying the $500,000 cap on all listing and annual fees payable by an issuer in a calendar year as set forth in Section 902.02 and to allocate those fees between the two issuers in the manner described in the immediately preceding sentence. The Exchange does not believe that the limitation of the proposed amendments to the fee caps to issuers that are related as the component parts of an UPREIT structure is unfairly discriminatory. The UPREIT structure is distinctive in the degree to which the two component issuers function as a single economic enterprise with one management team and board. As the expectation is that these sorts of listings will be rare, the Exchange does not anticipate that it will experience any meaningful diminution in revenue as a result of the proposed amendments and therefore does not believe that the proposed amendments would in any way negatively affect its ability to continue to adequately fund its regulatory program or the services the Exchange provides to issuers. The Exchange also notes that the initial and annual listing fees applicable to all other REITs and operating companies are remaining unchanged, so no company that is not eligible to benefit from the proposed amendments is being asked to pay higher fees than it is currently paying.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5) of the Act,[12] 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. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act, in particular 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.

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it does not unfairly discriminatory [sic] among listed companies because there is a reasonable justification for charging UPREITs different fees from those charged to other issuers and there are cost efficiencies for the Exchange in that the two listed issuers associated with an UPREIT represent essentially a single enterprise with a single management and board. In particular, the Exchange notes that a significant proportion of the regulatory cost it incurs in connection with the initial and continued listing of an issuer relates to the review by NYSE Regulation staff of the issuer's compliance with the board composition and board committee requirements set forth in Section 303A of the Manual. As the Operating Partnership is controlled by the REIT in its capacity as general partner, the Operating Partnership is able to rely on the audit committee of the REIT's board for its compliance with Sections 303A.06 and 303A.07.[13] Consequently, for all practical purposes, NYSE Regulation staff can rely on their corporate governance compliance reviews of the REIT as a means of effectively monitoring the Operating Partnership's compliance.[14]

The Exchange also notes that no other company will be required to pay higher fees as a result of the proposed amendments.

The Exchange believes that the proposed rule change is reasonable in light of the fact that the two listed issuers associated with an UPREIT share a single board of directors and management team and the listed securities represent equivalent economic interests in a single enterprise. In light of the regulatory and client service efficiencies and resultant cost savings to the Exchange resulting from this distinctive overlapping of corporate governance and economic interests in the UPREIT structure, the Exchange believes that it would be more equitable to establish an overall cap on what these affiliated entities would be required to pay for listing services. Moreover, the Exchange believes that the proposal is not unfairly discriminatory in that it will be available to all UPREITs; other listed companies do not present the same sort of overlapping economic interests and

[9] *See* Exchange Act Rule 10A–3(e)(3), which provides that ''[I]n the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term board of directors means the board of directors of the managing general partner, managing member or equivalent body.'' *See also* the discussion at page 18790 of the adopting release for Rule 10A–3. Release Nos. 33–8220 and 34–47654, 68 FR 18788 (April 16, 2003).

[10] The Exchange notes that NYSE Regulation's corporate governance compliance program relies largely on a review of required disclosures in issuers' annual meeting proxy statements. As the OP Unit holders do not have the right to elect directors, the Operating Partnership does not have an annual meeting proxy statement and the staff will rely on a review of the REIT's proxy statement as the basis for a combined review of both the REIT and the Operating Partnership.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and 15 U.S.C. 78f(b)(5).

[13] *See* note 9, supra.

[14] As noted above, the Exchange believes that there are also regulatory efficiencies in its financial compliance review process in regards to UPREITs, particularly because if both the REIT and the Operating Partnership fall below compliance with the Exchange's ongoing financial listing standards, any compliance plan submissions would be virtually identical and therefore the NYSE Regulation staff's review, approval and ongoing monitoring of such plans would require substantially fewer resources than were they for two independent companies. Similarly, the Exchange believes that non-regulatory efficiencies would exist, as the Exchange's listings client service group would interact with one management team instead of two. *See* note 10, *supra*.

governance structures that warrant common treatment of UPREITs for fee cap purposes.

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.

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) [15] of the Act and subparagraph (f)(2) of Rule 19b–4 [16] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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.* Please include File Number SR–NYSE–2012–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–43. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site 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–NYSE–2012–43 and should be submitted on or before October 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22964 Filed 9–17–12; 8:45 am]

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

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67844; File No. SR–NYSEArca-2012–75]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending NYSE Arca Equities Rule 7.37(c) to Provide That the Tracking Order Process Is Available Only for Orders That Are Eligible To Route To an Away Market

September 12, 2012.

I. Introduction

On July 11, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 7.37(c) to provide that the Tracking Order Process is available only for orders that are eligible to route to an away market. The proposed rule change was published for comment in the **Federal Register** on July 30, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 7.37(c) to specify that only orders that are eligible to route to an away market would participate in the Tracking Order Process. This proposed rule change would make Rule 7.37(c) consistent with the manner by which the Exchange operates the Tracking Order Process.

NYSE Arca Equities Rule 7.37 sets forth the Order Execution process at the Exchange. The Tracking Order Process is the fourth step in the Order Execution process, and is preceded by the Directed Order Process, Display Order Process and Working Order Process.[4] Currently, Rule 7.37(c) states that if an order has not been executed in its entirety in one of the processes preceding the Tracking Order Process, such order will enter the Tracking Order Process for potential matching and execution against Tracking Orders.[5] Rule 7.37(c) does not specify that among the orders that are not fully executed in the processes preceding the Tracking Order Process, it is only those that are eligible to route to an away market that participate in the Tracking Order Process. The proposed rule change would add this specification to Rule 7.37(c) to make the rule consistent with the operation of the Tracking Order Process.

The Exchange also proposes to delete provisions in current rule 7.37(c) stating that any portion of an order received from another market center or market participant is cancelled immediately, and an incoming order that is designated as an ISO does not interact in the Tracking Order Process.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67490 (July 24, 2012), 77 FR 44702 (''Notice'').

[4] *See* NYSE Arca Equities Rule 7.37.

[5] Tracking Orders are undisplayed, priced round lot orders that are eligible for execution in the Tracking Order Process against orders equal to or less than the aggregate size of the Tracking Order interest at that price. *See* NYSE Arca Equities Rule 7.31(f).