



Clare F. Saperstein
Associate General Counsel

New York Stock Exchange
11 Wall Street
New York, NY 10005
T +1 [REDACTED]

August 31, 2015

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0609

Re: **File No. SR-NYSE-2015-02 (the "Filing")**

Dear Mr. Fields:

The New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change to amend Section 312.03(b) ("Section 312.03(b)") of the NYSE Listed Company Manual (the "Manual") to exempt certain early stage companies from having to obtain shareholder approval prior to selling shares for cash to related parties, affiliates of related parties or entities in which a related party has a substantial interest.¹ On August 4, 2015, the Commission issued an Order Instituting Proceedings to Determine Whether to Disapprove this proposed rule change.² In determining whether to disapprove the proposed rule change, the Commission seeks public comment on two primary issues, which are addressed in turn herein.

I. The Proposed Rule Change is Consistent with the Shareholder Approval Requirements of Section 303A.08 of the Manual.

Footnote 22 of the Order Instituting Proceedings states that the NYSE has not addressed how its proposed amendment to Section 312.03(b) of the Manual is consistent with the shareholder approval requirements of Section 303A.08 ("Section 303A.08") of the Manual. The Exchange's longstanding policy is that any time a listed company sells equity securities to a director, officer or employee for a price that is *at a discount* to the then-current market price, such securities are deemed to be equity compensation requiring shareholder approval under Section 303A.08. Nothing in the proposed amendment will change the Exchange's application of this policy going forward.

Section 312.03(b) states that shareholders must approve the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to:

- (1) a director, officer or substantial security holder³ of the listed company (each, a "Related Party");
- (2) a subsidiary, affiliate or other closely-related person of a Related Party; or
- (3) any company or entity in which a Related Party has a substantial direct or indirect interest;

¹ See Securities Exchange Act Release No. 74849 (April 30, 2015), 80 FR 26118 ("Notice").

² See Securities Exchange Act Release No. 75599 (Aug. 4, 2015) ("Order Instituting Proceedings").

³ The Exchange notes that a substantial security holder can be either an employee or non-employee of a listed company.

if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.⁴ Section 303A.08 requires that shareholders approve all equity compensation plans and material revisions thereto, subject to certain limited exceptions.

As discussed above, the Exchange's longstanding policy has been that any sale of equity securities to a director, officer or employee at a price that is *a discount* to the then-current market price constitutes equity compensation subject to shareholder approval under Section 303A.08. The Exchange's application of this policy will not change as a result of the proposed amendment to Section 312.03(b). Accordingly, the exemptions proposed in the amendment to Section 312.03(b) would not, in all cases, exempt a transaction from the shareholder approval requirements of Section 303A.08.

When selling up to 19.9% of its outstanding equity securities to a director, officer or employee, in order to be exempt from shareholder approval (under both Section 303A.08 and the proposed Section 312.03(b)), an Early Stage Company would have to price the transaction *at or above* then then-current market price. When priced *at or above* then then-current market price, the shares sold are not equity compensation and there is no economic dilution to the Early Stage Company's shareholders. The Exchange believes that this pricing requirement should alleviate the concern raised by the Commission.

The only other transactions that the amendment proposes to exempt from shareholder approval under Section 312.03(b) are sales for cash of up to 19.9% of an Early Stage Company's outstanding common stock to (i) a non-employee substantial shareholder, (ii) a subsidiary, affiliate or other closely-related person of a Related Party, and (iii) any company or entity in which a Related Party has a substantial direct or indirect interest. The Exchange continues to believe that it is appropriate to exempt such transactions from shareholder approval for the reasons discussed in the Filing. Early Stage Companies have continuous and, in many cases, immediate financing needs. A primary source of this necessary funding is frequently non-employee significant shareholders and affiliates of a Related Party. To require Early Stage Companies to undertake the costly and time-consuming process of obtaining shareholder approval prior to each such transaction could severely jeopardize their ability to conduct their operations.

The Exchange wishes to clarify a potential ambiguity noted by the Commission in Footnote 7 of the Order Instituting Proceedings. The Exchange proposes to exempt transactions involving the sale of stock for cash by an Early Stage Company to (i) a Related Party, (ii) a subsidiary, affiliate or other closely-related person of a Related Party; or (iii) any company or entity in which a Related Party has a substantial direct or indirect interest from the requirements of Section 312.03(b). The Exchange understands that Exhibit 5 to the Filing may not have accurately reflected its intention. Therefore, the Exchange has filed an amendment to the Filing to clarify its proposed change, a copy of which is attached.

II. Audit Committee Approval of Early Stage Company Related Party Transactions Is An Effective Substitute for Shareholder Approval

Under the proposed amendment, all Early Stage Company related party transactions exempt from shareholder approval would nonetheless remain subject to approval by a company's Audit Committee or comparable committee comprised solely of independent directors. The Commission expressed concern that

⁴ However, if the Related Party involved in the transaction is classified as such solely because such person is a substantial security holder, and if the issuance relates to a sale of stock for cash at a price at least as great as each of the book and market value of the issuer's common stock, then shareholder approval will not be required unless the number of shares to be issued exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

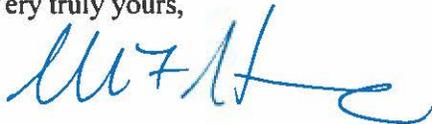
approval by an independent committee may not be an effective substitute for shareholder approval and, thus, that the proposed amendment may not be consistent with the requirements of Section 6(b)(5)⁵ of the Securities Exchange Act of 1934⁶ (the "Act"). The Exchange continues to believe that independent committee review and approval of related party transactions is an appropriate safeguard to protect shareholder interests.

The Exchange believes that the proposed amendment is consistent with Section 6(b)(5) of the Act because, as amended, Section 312.03(b) would have sufficient safeguards to "prevent fraudulent and manipulative acts and practices" and to "protect investors and the public interest." Specifically, the Exchange believes that its requirement that an independent committee approve all transactions exempt from shareholder approval under the proposed rule is an effective measure in furtherance of these goals. Directors owe a fiduciary duty to the shareholders whom they represent and can be held personally liable for any violation of that duty. Exchange rules already require that all related party transactions be reviewed by an appropriate group at a listed company and that Section 314.00 of the Manual indicates that the Audit Committee or comparable committee is the appropriate body. Given that Exchange-listed companies already have such procedures in place and independent directors are often the most well positioned to evaluate related party transactions because of their knowledge of company affairs, the Exchange believes that its proposed requirement protects shareholders and, therefore, is consistent with Section 6(b)(5) of the Act.

The Exchange notes that the Nasdaq Stock Market ("Nasdaq") does not require shareholder approval of any non-equity compensation to a related party involving the sale of up to 19.9% of a company's outstanding equity securities. Above 19.9%, Nasdaq similarly does not require shareholder approval of sales to a related party, provided that the price paid per share is *at or above* the greater of book and market value.⁷ The proposed amendment to Section 312.03(b) merely endeavors to place the Exchange in the same position as Nasdaq, its primary competitor for listings. The Exchange seeks to permit the small universe of Early Stage Companies to sell up to 19.9% of their outstanding equity securities to certain related parties without undertaking the costly and time-consuming process of obtaining shareholder approval. Each of the transactions that the Exchange seeks to exempt from shareholder approval is exempt from shareholder approval by Nasdaq.

We thank the Commission for the opportunity to comment on the Release and the proposed Filing. If you have any additional question, or if we can be of further assistance in this matter, please do not hesitate to contact us.

Very truly yours,



Encl.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(1).

⁷ The Exchange similarly exempts bona fide private financings in excess of 19.9% from shareholder approval provided the transaction is priced *at or above* the greater of book and market value. However, the Exchange's exemption imposes additional restrictions. To utilize such exemption, a company must sell the securities (i) via a registered broker-dealer intermediary or (ii) to multiple purchasers such that no one purchaser or group of related purchasers acquires more than 5% of a company's outstanding common stock. Unlike Nasdaq, therefore, absent shareholder approval the Exchange does not permit direct sales to a single related party in excess of 19.9% regardless of how the transaction is priced.

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 3	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2015 - * 02	Amendment No. (req. for Amendments *) 1
---------------	--	----------------------------	---

Filing by New York Stock Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input 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 type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<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"/>
--	---

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend Sections 312.03b and 312.04 of the NYSE Listed Company Manual to exempt early stage companies from having to obtain shareholder approval before issuing shares to related parties and affiliates of related parties or entities in which a related party has a substantial interest

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 * Patrick Last Name * Troy

Title * Chief Counsel NYSE Regulation

E-mail * Patrick.Troy@theice.com

Telephone * (212) 656-4522 Fax (212) 656-2443

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 08/31/2015 Associate General Counsel

By Clare Saperstein

(Name *)

Clare Saperstein,

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

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, 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

Add Remove View

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

Add Remove View

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.

SR-NYSE-2015-02; Partial Amendment No. 1

New York Stock Exchange LLC (the “Exchange”) hereby amends SR-NYSE-2015-02 (the “Filing”) as follows:

1. The last paragraph under Section 312.03(b)(3) of Exhibit 5 to the Filing is replaced in its entirety with the following:

“In addition, the provisions of this Section 312.03(b) will not apply to the sale of stock for cash by an Early Stage Company to (i) a Related Party, (ii) a subsidiary, affiliate or other closely-related person of a Related Party; or (iii) any company or entity in which a Related Party has a substantial direct or indirect interest, provided that the Early Stage Company’s audit committee or a comparable committee comprised solely of independent directors reviews and approves of all such transactions prior to their completion.”

The Exchange believes that the proposed rule change, as modified by this amendment, is consistent with the requirement of Section 6(b)(5) of the Securities Exchange Act of 1934¹ (“Act”) that an exchange have rules that are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general to protect investors and the public interest. The amendment seeks to clarify that the Exchange proposes to exempt from shareholder approval transactions involving the sale of stock for cash by an Early Stage Company to (i) a Related Party, (ii) a subsidiary, affiliate or other closely-related person of a Related Party; or (iii) any company or entity in which a Related Party has a substantial direct or indirect interest. The Exchange believes there was a potential ambiguity in Exhibit 5 to the Filing that could result in uncertainty as to which transactions the Exchange proposes to exempt from shareholder approval. The Exchange believes that clarifying this ambiguity will ensure that listed companies and investors have accurate and complete information about the Exchange’s rules and therefore promotes just and equitable principles of trade, remove impediments to a free and open market and protect investors and the public interest.

All other statements and representations in the Filing remain unchanged as stated therein and no other changes are being made.

¹ 15 U.S.C. 78f(b)(5).