Martha Redding
Associate General Counsel
Assistant Secretary

New York Stock Exchange
11 Wall Street
New York, NY 10005

May 16, 2017

VIA E-MAIL

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-80313 (SR-NYSE-2017-12)

Dear Mr. Fields:

NYSE LLC; filed the attached Amendment No. 1 to the above-referenced filing on May 16, 2017.

Sincerely,

Encl. (Amendment No. 1 to SR-NYSE-2017-12)

OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2017 - * 12
Amendment No. (req. for Amendments *) 1

Filing by New York Stock Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☐ Amendment * ☑ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposed Rule Change to Amend Section 102.01B of the NYSE Listed Company Manual

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 * John Last Name * Carey

Title * Senior Director NYSE Group Inc

E-mail * [redacted]

Telephone * ([redacted] Fax [redacted]

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.

Date 05/16/2017

By Clare Saperstein

(Name *)

(Title *)

Associate General Counsel

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.

Clare Saperstein,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 *

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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

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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

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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 "Exchange Act")[1] and Rule 19b-4 thereunder,[2] New York Stock Exchange LLC ("NYSE" or the "Exchange") proposes to amend Section 102.01B of the NYSE Listed Company Manual (the "Manual") to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration.

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
Senior Director
NYSE Group, Inc.
[redacted]

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 102.01B of the Manual to modify the

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

2 17 CFR 240.19b-4.

provisions relating to the qualification of companies listing without a prior Exchange Act registration.[3]

Generally, the Exchange expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off. Companies listing in connection with an IPO must demonstrate that they have $40 million in market value of publicly-held shares, while companies that are listing upon transfer from another exchange or the over-the counter market or pursuant to a spin-off must demonstrate that they have $100 million in market value of publicly-held shares.

Section 102.01B currently contains a provision under which the Exchange recognizes that some companies that have not previously had their common equity securities registered under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list their common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. Footnote (E) of Section 102.01B provides that the Exchange will, on a case by case basis, exercise discretion to list such companies. In exercising this discretion, Footnote (E) provides that the Exchange will determine that such company has met the $100 million aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (a "Valuation") of the company and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market"). The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

Any Valuation used for purposes of Footnote (E) must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. The Exchange will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to

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[3] The Exchange has previously filed this proposal as SR-NYSE-2017-12. See Securities Exchange Act Release No. 34-80313 (March 27, 2017), 82 FR 16082 (March 31, 2017). This Amendment No. 1 to SR-NYSE-2017-12 replaces SR-NYSE-2017-12 as originally filed and supersedes such filing in its entirety.

monitor the company and the appropriateness of relying on the Valuation up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the Exchange's market value requirement. The Exchange may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

While Footnote (E) to Section 102.01B provides for a company listing upon effectiveness of a selling shareholder registration statement, it does not make any provision for a company listing in connection with the effectiveness of an Exchange Act registration statement in the absence of an IPO or other Securities Act registration. A company is able to become an Exchange Act registrant without a concurrent public offering by filing a Form 10 (or, in the case of a foreign private issuer, a Form 20-F) with the SEC. The Exchange believes that it is appropriate to list companies that wish to list immediately upon effectiveness of an Exchange Act registration statement without a concurrent Securities Act registration provided the applicable company meets all other listing requirements. Consequently, the Exchange proposes to amend Footnote (E) to Section 102.01B to explicitly provide that it applies to companies listing upon effectiveness of an Exchange Act registration statement without a concurrent Securities Act registration as well as to companies listing upon effectiveness of a selling shareholder registration statement.

The Exchange notes that the requirement of Footnote (E) that the Exchange should rely on recent Private Placement Market trading in addition to a Valuation may cause difficulties for certain companies that are otherwise clearly qualified for listing. Some companies that are clearly large enough to be suitable for listing on the Exchange do not have their securities traded at all on a Private Placement Market prior to going public. In other cases, the Private Placement Market trading is too limited to provide a reasonable basis for reaching conclusions about a company’s qualification. Consequently, the Exchange proposes to amend Footnote (E) to provide an exception to the Private Placement Market trading requirement for companies with respect to which there is a recent Valuation available indicating at least $250 million in market value of publicly-held shares. Adopting a requirement that the Valuation must be at least two-and-a-half times the $100 million requirement will give a significant degree of comfort that the market value of the company’s shares will meet the standard upon commencement of trading on the Exchange. The Exchange notes that it is unlikely that any Valuation would reach a conclusion that was incorrect to the degree necessary for a company using this provision to fail to meet the $100 million requirement upon listing, in particular because any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations.

The Exchange proposes to further amend Footnote (E) by providing that a valuation agent will not be deemed to be independent if:

- At the time it provides such valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.
- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

The Exchange believes that this proposed new requirement will provide a significant additional guarantee of the independence of any entity providing a Valuation for purposes of Footnote (E).

The proposed amendments would enable the Exchange to compete for listings of companies that would currently be qualified for listing on the NASDAQ Stock Market ("NASDAQ") but not on the NYSE. NASDAQ's initial listing rules do not explicitly address how NASDAQ determines compliance with its initial listing market capitalization requirements by private companies seeking to list upon effectiveness of a selling shareholder registration statement or Exchange Act registration without a concurrent underwritten public offering. However, over an extended period of time, NASDAQ has listed a number of previously private companies in conjunction with the effectiveness of a selling shareholder registration statement without an underwritten offering. The Exchange's proposal would permit it to compete for listings that do not have a concurrent underwritten public offering.

The Exchange believes that it is important to have a transparent and consistent approach to determining compliance with applicable market capitalization requirements by previously private companies seeking to list without a public offering and that Footnote (E) to Section 102.01B as amended would provide such a mechanism. In the absence of the proposed amendments, companies

listing upon effectiveness of an Exchange Act registration statement would have no means of listing on the NYSE, while NASDAQ's longstanding policies would enable it to list a company under those circumstances. As such, the proposed amendment would address a significant competitive disadvantage faced by the NYSE, while also providing certain companies with an alternative listing venue where none currently exists.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change would foster cooperation and coordination with persons engaged in clearing and settling transactions in securities, thereby facilitating such transactions. The proposal to permit companies listing upon effectiveness of an Exchange Act registration statement without a concurrent public offering or Securities Act registration is designed to protect investors and the public interest, because such companies will be required to meet all of the same quantitative requirements met by other listing applicants. The proposal to amend Footnote (E) to Section 102.01B to allow companies to avail themselves of that provision without any reliance on Private Placement Market trading is designed to protect investors and the public interest because any company relying solely on a valuation to demonstrate compliance with the market value of publicly-held shares requirement will be required to demonstrate a market value of publicly-held shares of $250 million, rather than the $100 million that is generally applicable. The proposal to include a definition of valuation agent independence in Footnote (E) is consistent with the protection of investors, as it ensures that any entity providing a Valuation for purposes of Footnote (E) will have a significant level of independence from the listing applicant.

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 purpose of the Exchange Act. Rather, the proposed rule change will increase

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4 15 U.S.C. 78f(b).

5 15 U.S.C. 78f(b)(5).

competition for new listings by enabling companies to list that meet all quantitative requirements but are currently unable to list because of the methodology required by the current rules to demonstrate their compliance. As noted above, NASDAQ's listing rules do not prohibit the listing of companies in these circumstances and NASDAQ has listed such companies on several occasions in the past, so the proposed amendments will increase competition by enabling the NYSE to compete with NASDAQ for these listings.

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

The Exchange does not consent at this time to an extension of any time period for Commission action.

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

Not applicable.

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

Not applicable.

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 Federal Register

Exhibit 4 – Proposed Rule Text as amended by Amendment No.1 to the filing

Exhibit 5 – Proposed Rule Text

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSE-2017-12; Amendment No. 1)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Section 102.01B of the NYSE Listed Company Manual

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 May 16, 2017, 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 Section 102.01B of the NYSE Listed Company Manual (the "Manual") to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration. The proposed rule change is available on the Exchange's 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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 102.01B of the Manual to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration.[4]

Generally, the Exchange expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off. Companies listing in connection with an IPO must demonstrate that they have $40 million in market value of publicly-held shares, while companies that are listing upon transfer from another exchange or the over-the counter market or pursuant to a spin-off must demonstrate that they have $100 million in market value of publicly-held shares.

Section 102.01B currently contains a provision under which the Exchange recognizes that some companies that have not previously had their common equity securities registered under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list their common equity securities on the

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[4] The Exchange has previously filed this proposal as SR-NYSE-2017-12. See Securities Exchange Act Release No. 34-80313 (March 27, 2017), 82 FR 16082 (March 31, 2017). This Amendment No. 1 to SR-NYSE-2017-12 replaces SR-NYSE-2017-12 as originally filed and supersedes such filing in its entirety.

Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. Footnote (E) of Section 102.01B provides that the Exchange will, on a case by case basis, exercise discretion to list such companies. In exercising this discretion, Footnote (E) provides that the Exchange will determine that such company has met the $100 million aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (a "Valuation") of the company and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market"). The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

Any Valuation used for purposes of Footnote (E) must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. The Exchange will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation

up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the Exchange's market value requirement. The Exchange may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

While Footnote (E) to Section 102.01B provides for a company listing upon effectiveness of a selling shareholder registration statement, it does not make any provision for a company listing in connection with the effectiveness of an Exchange Act registration statement in the absence of an IPO or other Securities Act registration. A company is able to become an Exchange Act registrant without a concurrent public offering by filing a Form 10 (or, in the case of a foreign private issuer, a Form 20-F) with the SEC. The Exchange believes that it is appropriate to list companies that wish to list immediately upon effectiveness of an Exchange Act registration statement without a concurrent Securities Act registration provided the applicable company meets all other listing requirements. Consequently, the Exchange proposes to amend Footnote (E) to Section 102.01B to explicitly provide that it applies to companies listing upon effectiveness of an Exchange Act registration statement without a concurrent Securities Act registration as well as to companies listing upon effectiveness of a selling shareholder registration statement.

The Exchange notes that the requirement of Footnote (E) that the Exchange should rely on recent Private Placement Market trading in addition to a Valuation may

cause difficulties for certain companies that are otherwise clearly qualified for listing. Some companies that are clearly large enough to be suitable for listing on the Exchange do not have their securities traded at all on a Private Placement Market prior to going public. In other cases, the Private Placement Market trading is too limited to provide a reasonable basis for reaching conclusions about a company's qualification. Consequently, the Exchange proposes to amend Footnote (E) to provide an exception to the Private Placement Market trading requirement for companies with respect to which there is a recent Valuation available indicating at least $250 million in market value of publicly-held shares. Adopting a requirement that the Valuation must be at least two-and-a-half times the $100 million requirement will give a significant degree of comfort that the market value of the company's shares will meet the standard upon commencement of trading on the Exchange. The Exchange notes that it is unlikely that any Valuation would reach a conclusion that was incorrect to the degree necessary for a company using this provision to fail to meet the $100 million requirement upon listing, in particular because any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations.

The Exchange proposes to further amend Footnote (E) by providing that a valuation agent will not be deemed to be independent if:

- At the time it provides such valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to

be listed, including any right to receive any such securities exercisable within 60 days.

- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

The Exchange believes that this proposed new requirement will provide a significant additional guarantee of the independence of any entity providing a Valuation for purposes of Footnote (E).

The proposed amendments would enable the Exchange to compete for listings of companies that would currently be qualified for listing on the NASDAQ Stock Market ("NASDAQ") but not on the NYSE. NASDAQ's initial listing rules do not explicitly address how NASDAQ determines compliance with its initial listing market

capitalization requirements by private companies seeking to list upon effectiveness of a selling shareholder registration statement or Exchange Act registration without a concurrent underwritten public offering. However, over an extended period of time, NASDAQ has listed a number of previously private companies in conjunction with the effectiveness of a selling shareholder registration statement without an underwritten offering. The Exchange's proposal would permit it to compete for listings that do not have a concurrent underwritten public offering.

The Exchange believes that it is important to have a transparent and consistent approach to determining compliance with applicable market capitalization requirements by previously private companies seeking to list without a public offering and that Footnote (E) to Section 102.01B as amended would provide such a mechanism. In the absence of the proposed amendments, companies listing upon effectiveness of an Exchange Act registration statement would have no means of listing on the NYSE, while NASDAQ's longstanding policies would enable it to list a company under those circumstances. As such, the proposed amendment would address a significant competitive disadvantage faced by the NYSE, while also providing certain companies with an alternative listing venue where none currently exists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular in that it is designed to promote just and equitable principles of trade, to foster

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5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change would foster cooperation and coordination with persons engaged in clearing and settling transactions in securities, thereby facilitating such transactions. The proposal to permit companies listing upon effectiveness of an Exchange Act registration statement without a concurrent public offering or Securities Act registration is designed to protect investors and the public interest, because such companies will be required to meet all of the same quantitative requirements met by other listing applicants. The proposal to amend Footnote (E) to Section 102.01B to allow companies to avail themselves of that provision without any reliance on Private Placement Market trading is designed to protect investors and the public interest because any company relying solely on a valuation to demonstrate compliance with the market value of publicly-held shares requirement will be required to demonstrate a market value of publicly-held shares of $250 million, rather than the $100 million that is generally applicable. The proposal to include a definition of valuation agent independence in Footnote (E) is consistent with the protection of investors, as it ensures that any entity providing a Valuation for purposes of Footnote (E) will have a significant level of independence from the listing applicant.

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 purpose of the Exchange Act. Rather, the proposed rule change will increase competition for new listings by enabling companies to list that meet all quantitative requirements but are currently unable to list because of the methodology required by the current rules to demonstrate their compliance. As noted above, NASDAQ's listing rules do not prohibit the listing of companies in these circumstances and NASDAQ has listed such companies on several occasions in the past, so the proposed amendments will increase competition by enabling the NYSE to compete with NASDAQ for these listings.

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 up to 90 days (i) as the Commission may designate 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-12 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-12. 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 Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-2017-12 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.[7]

Robert W. Errett
Deputy Secretary

[7] 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Additions underscored
Deletions [bracketed]
Bold italics indicate changes from Exhibit 5 to SR-NYSE-2017-12

NYSE Listed Company Manual

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Section 1 The Listing Process

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102.00 Domestic Companies

102.01 Minimum Numerical Standards—Domestic Companies—Equity Listings

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102.01B A Company must demonstrate an aggregate market value of publicly-held shares of $40,000,000 for companies that list either at the time of their initial public offerings ("IPO") (C) or as a result of spin-offs or under the Affiliated Company standard or, for companies that list at the time of their Initial Firm Commitment Underwritten Public Offering (C), and $100,000,000 for other companies (D)(E). A company must have a closing price or, if listing in connection with an IPO or Initial Firm Commitment Underwritten Public Offering, an IPO or Initial Firm Commitment Underwritten Public Offering price per share of at least $4 at the time of initial listing.

* * * * *

(E) Generally, the Exchange expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off. However, the Exchange recognizes that some companies that have not previously had their common equity securities registered under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list their common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. Similarly, some companies that have not previously had their common equity securities registered under the Exchange Act may wish to list immediately upon effectiveness of an Exchange Act registration statement without any concurrent IPO or Securities Act registration. Consequently, the Exchange

will, on a case by case basis, exercise discretion to list companies whose stock is not previously registered under the Exchange Act, where such a company is listing without a related underwritten offering (i) upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements or (ii) upon effectiveness of an Exchange Act registration statement without any concurrent IPO or Securities Act registration. In exercising this discretion, the Exchange will determine that such company has met the $100,000,000 aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (a "Valuation") of the company and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market"). The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market. Alternatively, in the absence of any recent trading in a Private Placement Market, the Exchange will determine that such company has met its market-value of publicly-held shares requirement if the company provides a Valuation evidencing a market value of publicly-held shares of at least $250,000,000.

Any Valuation used for [this] the above-referenced purposes must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations.* The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. The Exchange will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the

Exchange's market value requirement. The Exchange may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

**** The Exchange proposes to further amend Footnote (E) by providing that a valuation agent will not be deemed to be independent if:***

- ***At the time it provides such valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.***
- ***The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.***
- ***The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.***

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EXHIBIT 5

Added text underlined;
Deleted text in [brackets].

NYSE Listed Company Manual

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Section 1 The Listing Process

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102.00 Domestic Companies

102.01 Minimum Numerical Standards—Domestic Companies—Equity Listings

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102.01B A Company must demonstrate an aggregate market value of publicly-held shares of $40,000,000 for companies that list either at the time of their initial public offerings ("IPO") (C) or as a result of spin-offs or under the Affiliated Company standard or, for companies that list at the time of their Initial Firm Commitment Underwritten Public Offering (C), and $100,000,000 for other companies (D)(E). A company must have a closing price or, if listing in connection with an IPO or Initial Firm Commitment Underwritten Public Offering, an IPO or Initial Firm Commitment Underwritten Public Offering price per share of at least $4 at the time of initial listing.

* * * * *

(E) Generally, the Exchange expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off. However, the Exchange recognizes that some companies that have not previously had their common equity securities registered under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list their common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. Similarly, some companies that have not previously had their common equity securities registered under the Exchange Act may wish to list immediately upon effectiveness of an Exchange Act registration statement without any concurrent IPO or Securities Act registration. Consequently, the Exchange will, on a case by case basis, exercise discretion to list

companies whose stock is not previously registered under the Exchange Act, where such a company is listing without a related underwritten offering (i) upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements or (ii) upon effectiveness of an Exchange Act registration statement without any concurrent IPO or Securities Act registration. In exercising this discretion, the Exchange will determine that such company has met the $100,000,000 aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (a "Valuation") of the company and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market"). The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market. Alternatively, in the absence of any recent trading in a Private Placement Market, the Exchange will determine that such company has met its market-value of publicly-held shares requirement if the company provides a Valuation evidencing a market value of publicly-held shares of at least $250,000,000.

Any Valuation used for [this] the above-referenced purposes must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations.* The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. The Exchange will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the Exchange's market value requirement. The Exchange may

withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

* The Exchange proposes to further amend Footnote (E) by providing that a valuation agent will not be deemed to be independent if:

- At the time it provides such valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.
- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

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