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October 12, 2017

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

Re: SEC Release No. 34 – 81640 (the "Release"); File No. SR-NYSE-2017-30; *Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2 to Amend Section 102.01B of the NYSE Listed Company Manual to Provide for the Listing of Companies that List Without a Prior Exchange Act Registration and that Are Not Listing in Connection with an Underwritten Initial Public Offering and Related Changes to Rules 15, 104, and 123D*

Ladies and Gentlemen:

The Securities and Exchange Commission (the "SEC") has solicited public comment on whether rule changes proposed by New York Stock Exchange LLC ("NYSE") to permit listing of the common stock of issuers with no active trading market not accompanied by a concurrent IPO or resale Securities Act registration statement (sometimes referred to as a "direct listing") is consistent with Exchange Act Section 6(b)(5). We submit this comment to support approval of those rule changes by the SEC. We believe the information required to be included in an Exchange Act registration statement on Form 10 or Form 20-F, which is substantially the same as an IPO registration statement under the Securities Act, is sufficient to inform prospective investors about the issuer and its common stock, and the rule changes proposed by NYSE to promote an orderly opening market, based on an independent valuation of the issuer and

information regarding trading interest provided to the designated market maker ("DMM") by a financial advisor to the issuer, appear reasonably designed to do so.

We will focus our discussion only on the first of the two questions posed in the Release – whether a direct listing would "present unique considerations" with respect to (1) the role of various distribution participants, (2) the extent and nature of pricing information available to market participants prior to the commencement of trading, and (3) the availability of information indicative of the number of shares that are likely to be made available for sale at the commencement of trading. We address, as requested, whether these considerations raise any concerns, "including with respect to promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest." We believe the informational requirements of Exchange Act registration, coupled with measures that appear reasonably designed to create an orderly opening market, should provide a trading environment consistent with the protection of investors and the public interest in expanding investment opportunities.

We begin by addressing the SEC's question regarding "the role of various distribution participants." That assessment should be made within the framework for registration established by the Securities Act and the rules thereunder, including in particular Rule 144. Where the only stockholders eligible to sell their shares following a direct listing are non-affiliates that have held their shares at least one year, those sales and any related offering activity should be exempt from Securities Act registration under Section 4(a)(1), as implemented, in the case of restricted securities, by the non-exclusive safe harbor provided by Rule144(b)(1).

Although the issuer or its financial advisor may engage in informational sessions with shareholders or other market participants in advance of the listing, this should not alter the conclusion that offers and sales as described above are not being made by or on behalf of the issuer or any of its affiliates and thus do not create a "distribution" within the meaning of that term as used in the Securities Act. It would be highly unusual for an issuer or an affiliate to pay a broker-dealer to establish or maintain a secondary market by linking its compensation to trading price or volume or another trading-based metric. Absent the issuer or an affiliate effectively paying a broker-dealer to solicit secondary market trading, the framework of the Securities Act dictates that offers and sales by Section 4(a)(1)-eligible investors generally through Section 4(a)(3)-eligible intermediaries are exempt from registration under the Securities Act, and the statutory roles established under the Securities Act for a "distribution" thereunder should be inapposite.

The SEC also asks in the Release whether "the extent and nature of pricing information available to market participants prior to the commencement of trading" could be a differentiating factor between an IPO and direct listing that could raise concerns regarding investor protection in the latter case. As noted at the outset, the information regarding the business and financial affairs of an Exchange Act registrant in a Form 10 or Form 20-F is generally as comprehensive as in an IPO registration statement under the Securities Act. Although S-K Item 505, which requires a description of the various factors considered in determining the offering price, is an element of required information in a Securities Act IPO registration statement and not under

Form 10 or Form 20-F, in our experience Item 505 responsive disclosure tends to be boilerplate. Moreover, what underpins that price determination (including for purposes of the price range included in an IPO preliminary prospectus under Regulation S-K Item 501) is knowledge of what may be comparable public companies and the trading prices of their shares and the corresponding financial metrics of the new issuer, all of which will be publicly available. In any event, in the direct listing context, the valuation will be made by an entity that has "significant experience and demonstrable competence in the provision of such valuations" and is "independent" of the issuer as determined under the proposed NYSE rules. As the commenter cited in the Release correctly notes, the opening price will be quickly adjusted through normal market forces.

Finally, the SEC asks if there should be concern arising out of "the availability of information indicative of the number of shares that are likely to be made available for sale at the commencement of trading." Item 201 of Regulation S-K (and its substantial equivalent in Form 20-F (Item 9.A.5(a)) addresses shares available for sale and is required disclosure in both Exchange Act registration statements and Securities Act IPO registration statements. Although the absence of a certain block of shares offered at the outset necessarily creates greater uncertainty about offering interest at the outset, that concern seems to be reasonably mitigated by the practical reality that an issuer is unlikely to incur the cost – both out of pocket and in management time – of undertaking an exchange listing without having sounded out its shareholders about their general interest in possibly selling shares.

In sum, what the SEC is being asked to approve is allowing a non-public issuer to make possible an exchange trading market for its shares rather than just an OTC market as now is the case. It is understandable that an issuer that does not need to raise capital and whose affiliates are not ready to sell their shares would still prefer the benefits of an organized exchange market over an OTC market to provide greater liquidity for its shareholders generally and to make its shares more attractive as possible future acquisition currency. Investors purchasing in the secondary market would also benefit from the more liquid market that exchange listing provides. So with the adequate information a Form 10 or Form 20-F should provide, and NYSE's rule changes to promote an objective enterprise valuation and reliance on DMMs to establish a sensible opening price, the SEC should permit direct listings as another means of attracting non-public companies to our public markets.

We thank you for the opportunity to submit this comment letter. Please do not hesitate to contact Leslie N. Silverman or Nicolas Grabar [redacted] if you would like to discuss these matters further.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

cc: Securities and Exchange Commission
Hon. Walter J. Clayton, Chair
Hon. Kara M. Stein, Commissioner
Hon. Michael S. Piwowar, Commissioner
Hon. William Hinman, Director, Division of Corporation Finance
Hon. Robert Evans III, Deputy Director, Division of Corporation Finance