



**Martha Redding**  
Associate General Counsel  
Assistant Secretary

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

October 3, 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. 34-81102 (SR-NYSE-2017-31)

Dear Mr. Fields:

NYSE LLC, Inc. filed the attached Amendment No. 1 to the above-referenced filing on October 3, 2017.

Sincerely,

A handwritten signature in blue ink, appearing to be the initials "BJF" or similar, written in a cursive style.

(Encl. Amendment No. 1 to SR-NYSE-2017-31)



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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 - * 31 Amendment No. (req. for Amendments *) 1
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Filing by New York Stock Exchange LLC  
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"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule <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"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

Proposed Rule Change to Amend the Listed Company Manual to Adopt Initial and Continued Listing Standards for Subscription Receipts

**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.

(Title \*)

Date 10/03/2017 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 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**

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

Add Remove View

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

**Partial Amendment**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to amend the Listed Company Manual (the “Manual”) to adopt initial and continued listing standards for subscription receipts.

The text of the proposed rule change is set forth in Exhibit 5 attached hereto. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

- (b) The Exchange does not believe that the proposed rule change would 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.  


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

- (a) Purpose

The Exchange proposes to adopt initial and continued listing standards for the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

listing of subscription receipts (“Subscription Receipts”).<sup>3</sup>

Subscription Receipts are a financing technique that has been used for many years by Canadian public companies. Typically, Canadian companies use Subscription Receipts as a means of providing cash consideration in merger or acquisition transactions. Subscription Receipts are sold in a public offering that occurs after the execution of an acquisition agreement. The proceeds of the Subscription Receipt offering are held in a custody account and, if the related acquisition closes, the Subscription Receipt holders receive a specified number of shares of the issuer. If the acquisition does not close, then the Subscription Receipts are redeemed for their original purchase price plus any interest accrued on the custody account. The benefit of Subscription Receipts to the issuer is that they provide a contingent form of financing that only becomes permanent if the acquisition is completed. By contrast, a company financing the cash consideration for an acquisition by means of a traditional equity or debt offering is at risk of having incurred unnecessary dilution of its shareholders or indebtedness if the related acquisition fails to close. Subscription Receipts provide investors with flexibility to elect to invest in the post-merger company and not in the company in its pre-merger form.

A number of Canadian issuers whose common stock is listed on the Exchange have approached the Exchange in recent years about the possibility of dually-listing on the Exchange Subscription Receipts that they planned to list in Canada. More recently, market participants have also inquired about the possibility of the use of Subscription Receipts as a fundraising alternative for U.S. domestic issuers. As a result of this interest, the Exchange is now proposing to adopt proposed Section 102.08 of the Manual as a listing standard for Subscription Receipts.

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<sup>3</sup> The Exchange filed a proposed rule change to adopt initial and continued listing standards for the listing of Subscription Receipts. See Securities Exchange Act Release No. 81102 (July 7, 2017), 82 FR 32413 (July 13, 2017) (SR-NYSE-2017-31). This Amendment No. 1 to SR-NYSE-2017-31 replaces SR-NYSE-2017-31 as originally filed and supersedes such filing in its entirety. Amendment No. 1 amends the original filing to provide that Subscription Receipts will be subject to immediate suspension and delisting proceedings (with no eligibility with respect to the procedures set forth in Sections 802.02 and 802.03 of the Manual) in the event that at any time there are fewer than 100,000 publicly-held shares or 100 public holders of the Subscription Receipts. The proposed continued listing standard of 100 public holders replaces a 100 total holders continued listing standard set forth in the original filing. Amendment No. 1 also includes a discussion of the appropriateness of the proposed continued listing standard of 100 public holders. Finally, Amendment No. 1 corrects a reference in the text of the filing from a reference to Section 802.01 to a reference to Sections 802.02 and 802.03.

The Exchange will list Subscription Receipts pursuant to proposed Section 102.08 only if they meet the following requirements:

- (a) The issuer must be an NYSE listed company that is not currently non-compliant with any applicable continued listing standard.
- (b) The proceeds of the Subscription Receipts offering are designated solely for use in connection with the consummation of a specified acquisition that is the subject of a binding acquisition agreement (the “Specified Acquisition”).
- (c) The proceeds of the Subscription Receipts offering will be held in an interest-bearing custody account by an independent custodian.
- (d) The Subscription Receipts will promptly be redeemed for cash (i) at any time the Specified Acquisition is terminated, or (ii) if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts, or such earlier time as is specified in the operative agreements. If the Subscription Receipts are redeemed, the holders will receive cash payments equal to their proportion share of the funds in the custody account, including any interest earned on those funds.
- (e) If the Specified Acquisition is consummated, the holders of the Subscription Receipts will receive the shares of common stock for which their Subscription Receipts are exchangeable.
- (f) At the time of initial listing, the Subscription Receipts must have a price per share of at least \$4.00, a minimum total market value of publicly-held shares of \$100 million, 1,100,000 publicly-held shares<sup>4</sup> and 400 holders of round lots (i.e., 100 securities).
- (g) The sale of the Subscription Receipts and the issuance of the common stock of the issuer in exchange for the Subscription Receipts must both be registered under the Securities Act.

Listed Subscription Receipts will be convertible into the primary listed class of common stock of the listed company issuing the Subscription Receipts and will thereafter be subject to all of the continued listing requirements applicable to a primary class of common stock listed on the NYSE.

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<sup>4</sup> For purposes of the initial and continued listing requirements for Subscription Receipts, shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares.

The Exchange proposes to amend Section 802.01B to include continued listing standards applicable to Subscription Receipts listed under proposed Section 102.08. The Exchange will immediately initiate suspension and delisting procedures when (i) the number of publicly-held shares is less than 100,000, (ii) the number of public holders is less than 100, (iii) the total market capitalization of the Subscription Receipts is below \$15 million over 30 consecutive trading days, (iv) the related common equity security ceases to be listed, or (v) the issuer announces that the Specified Acquisition has been terminated. An issuer of Subscription Receipts will not be eligible to follow the procedures outlined in Section 802.02 and 802.03 with respect to these criteria, and any such security will be subject to delisting procedures as set forth in Section 804. In adopting a continued listing requirement of 100 public holders, the Exchange notes that this is comparable to the continued listing requirements with respect to holders in other exchange listing standards.<sup>5</sup>

In addition to the foregoing, Subscription Receipts will be subject to potential delisting for all of the reasons generally applicable to operating companies under Section 802.01. The Exchange notes that an issuer of Subscription Receipts may be subject to delisting at the time of closing of the related acquisition pursuant to the “backdoor listing” provisions of Section 703.08(E) of the Manual.

The Exchange proposes to amend Section 202.06 of the Manual to provide that whenever it halts trading in a security of a listed company pending dissemination of material news or implements any other required regulatory trading halt, the Exchange will also halt trading in any listed Subscription Receipt that is exchangeable by its terms into the common stock of such company.

The Exchange will monitor activity in Subscription Receipts to identify and deter any potential improper trading activity in such securities and will adopt enhanced surveillance procedures to enable it to monitor Subscription Receipts alongside the common equity securities into which they are convertible. Additionally, the Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>6</sup>

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<sup>5</sup> See the continued listing standard of 100 public holders for preferred stock and secondary classes of common stock applied by NASDAQ as set forth in NASDAQ Marketplace Rule 5460(a)(4). See also the NYSE’s continued listing standard of 100 total holders for warrants set forth in NYSE Listed Company Manual Section 802.01D.

<sup>6</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

Section 902.06 of the Manual sets forth listing fees for “short-term” securities, i.e., securities with a life of seven years or less. As Subscription Receipts listed under proposed Section 102.08 would have a maximum life of 12 months, they would fall under Section 802.01B by its terms. For the avoidance of doubt, the Exchange proposes to amend Section 902.06 to make it explicit that it will apply to Subscription Receipts.

The Exchange also proposes to amend Section 902.06 to remove a reference to the annual fees charged prior to January 1, 2017, as that reference is now irrelevant.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>8</sup> 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 Exchange believes that the proposed listing standard is consistent with Section 6(b)(5) of the Exchange Act in that it contains requirements in relation to the listing of Subscription Receipts that provide adequate protections for investors and the public interest. In particular, the Exchange believes that investors are significantly protected by the requirements in the proposed rule that: (i) the proceeds of the Subscription Receipt offering must be held in an interest-bearing custody account controlled by an independent custodian pending consummation of the Specified Acquisition, (ii) the custody account must be liquidated and the funds distributed pro rata to the Subscription Receipt holders if the Specified Acquisition is not consummated within 12 months, and (iii) any interest earned on the custody account must be distributed pro rata to the Subscription Receipt holders upon such liquidation.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of security and that will

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that the proposed amendment to the fees set forth in Section 902.06 of the Manual is consistent with Section 6(b)(4)<sup>9</sup> of the Exchange Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The proposed fees are the same as those applicable to other similar short-term securities as currently applied under Section 902.06.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The purpose of the proposed rule is to enhance competition by providing issuers and investors with an additional type of listed security that is not currently available on any domestic listing exchange and, as such, the Exchange does not believe it imposes any burden on competition.

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

The 100 public holder continued listing requirement in the proposal is based on the same requirement applied by NASDAQ for secondary classes of common stock, as set forth in NASDAQ Marketplace Rule 5460(a)(4).

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<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSE-2017-31; Amendment No. 1)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend the Listed Company Manual to Adopt Initial and Continued Listing Standards for Subscription Receipts

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 3, 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 the Listed Company Manual (the “Manual”) to adopt initial and continued listing standards for subscription receipts. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 adopt initial and continued listing standards for the listing of subscription receipts ("Subscription Receipts").<sup>4</sup>

Subscription Receipts are a financing technique that has been used for many years by Canadian public companies. Typically, Canadian companies use Subscription Receipts as a means of providing cash consideration in merger or acquisition transactions. Subscription Receipts are sold in a public offering that occurs after the execution of an acquisition agreement. The proceeds of the Subscription Receipt offering

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<sup>4</sup> The Exchange filed a proposed rule change to adopt initial and continued listing standards for the listing of Subscription Receipts. See Securities Exchange Act Release No. 81102 (July 7, 2017), 82 FR 32413 (July 13, 2017) (SR-NYSE-2017-31). This Amendment No. 1 to SR-NYSE-2017-31 replaces SR-NYSE-2017-31 as originally filed and supersedes such filing in its entirety. Amendment No. 1 amends the original filing to provide that Subscription Receipts will be subject to immediate suspension and delisting proceedings (with no eligibility with respect to the procedures set forth in Sections 802.02 and 802.03 of the Manual) in the event that at any time there are fewer than 100,000 publicly-held shares or 100 public holders of the Subscription Receipts. The proposed continued listing standard of 100 public holders replaces a 100 total holders continued listing standard set forth in the original filing. Amendment No. 1 also includes a discussion of the appropriateness of the proposed continued listing standard of 100 public holders. Finally, Amendment No. 1 corrects a reference in the text of the filing from a reference to Section 802.01 to a reference to Sections 802.02 and 802.03.

are held in a custody account and, if the related acquisition closes, the Subscription Receipt holders receive a specified number of shares of the issuer. If the acquisition does not close, then the Subscription Receipts are redeemed for their original purchase price plus any interest accrued on the custody account. The benefit of Subscription Receipts to the issuer is that they provide a contingent form of financing that only becomes permanent if the acquisition is completed. By contrast, a company financing the cash consideration for an acquisition by means of a traditional equity or debt offering is at risk of having incurred unnecessary dilution of its shareholders or indebtedness if the related acquisition fails to close. Subscription Receipts provide investors with flexibility to elect to invest in the post-merger company and not in the company in its pre-merger form.

A number of Canadian issuers whose common stock is listed on the Exchange have approached the Exchange in recent years about the possibility of dually-listing on the Exchange Subscription Receipts that they planned to list in Canada. More recently, market participants have also inquired about the possibility of the use of Subscription Receipts as a fundraising alternative for U.S. domestic issuers. As a result of this interest, the Exchange is now proposing to adopt proposed Section 102.08 of the Manual as a listing standard for Subscription Receipts.

The Exchange will list Subscription Receipts pursuant to proposed Section 102.08 only if they meet the following requirements:

- (a) The issuer must be an NYSE listed company that is not currently non-compliant with any applicable continued listing standard.
- (b) The proceeds of the Subscription Receipts offering are designated solely for use in connection with the consummation of a specified acquisition

that is the subject of a binding acquisition agreement (the “Specified Acquisition”).

- (c) The proceeds of the Subscription Receipts offering will be held in an interest-bearing custody account by an independent custodian.
- (d) The Subscription Receipts will promptly be redeemed for cash (i) at any time the Specified Acquisition is terminated, or (ii) if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts, or such earlier time as is specified in the operative agreements. If the Subscription Receipts are redeemed, the holders will receive cash payments equal to their proportion share of the funds in the custody account, including any interest earned on those funds.
- (e) If the Specified Acquisition is consummated, the holders of the Subscription Receipts will receive the shares of common stock for which their Subscription Receipts are exchangeable.
- (f) At the time of initial listing, the Subscription Receipts must have a price per share of at least \$4.00, a minimum total market value of publicly-held shares of \$100 million, 1,100,000 publicly-held shares<sup>5</sup> and 400 holders of round lots (i.e., 100 securities).
- (g) The sale of the Subscription Receipts and the issuance of the common stock of the issuer in exchange for the Subscription Receipts must both be registered under the Securities Act.

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<sup>5</sup> For purposes of the initial and continued listing requirements for Subscription Receipts, shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares.

Listed Subscription Receipts will be convertible into the primary listed class of common stock of the listed company issuing the Subscription Receipts and will thereafter be subject to all of the continued listing requirements applicable to a primary class of common stock listed on the NYSE.

The Exchange proposes to amend Section 802.01B to include continued listing standards applicable to Subscription Receipts listed under proposed Section 102.08. The Exchange will immediately initiate suspension and delisting procedures when (i) the number of publicly-held shares is less than 100,000, (ii) the number of public holders is less than 100, (iii) the total market capitalization of the Subscription Receipts is below \$15 million over 30 consecutive trading days, (iv) the related common equity security ceases to be listed, or (v) the issuer announces that the Specified Acquisition has been terminated. An issuer of Subscription Receipts will not be eligible to follow the procedures outlined in Section 802.02 and 802.03 with respect to these criteria, and any such security will be subject to delisting procedures as set forth in Section 804. In adopting a continued listing requirement of 100 public holders, the Exchange notes that this is comparable to the continued listing requirements with respect to holders in other exchange listing standards.<sup>6</sup>

In addition to the foregoing, Subscription Receipts will be subject to potential delisting for all of the reasons generally applicable to operating companies under Section 802.01. The Exchange notes that an issuer of Subscription Receipts may be subject to

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<sup>6</sup> See the continued listing standard of 100 public holders for preferred stock and secondary classes of common stock applied by NASDAQ as set forth in NASDAQ Marketplace Rule 5460(a)(4). See also the NYSE's continued listing standard of 100 total holders for warrants set forth in NYSE Listed Company Manual Section 802.01D.

delisting at the time of closing of the related acquisition pursuant to the “backdoor listing” provisions of Section 703.08(E) of the Manual.

The Exchange proposes to amend Section 202.06 of the Manual to provide that whenever it halts trading in a security of a listed company pending dissemination of material news or implements any other required regulatory trading halt, the Exchange will also halt trading in any listed Subscription Receipt that is exchangeable by its terms into the common stock of such company.

The Exchange will monitor activity in Subscription Receipts to identify and deter any potential improper trading activity in such securities and will adopt enhanced surveillance procedures to enable it to monitor Subscription Receipts alongside the common equity securities into which they are convertible. Additionally, the Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>7</sup>

Section 902.06 of the Manual sets forth listing fees for “short-term” securities, i.e., securities with a life of seven years or less. As Subscription Receipts listed under proposed Section 102.08 would have a maximum life of 12 months, they would fall under Section 802.01B by its terms. For the avoidance of doubt, the Exchange proposes to amend Section 902.06 to make it explicit that it will apply to Subscription Receipts.

The Exchange also proposes to amend Section 902.06 to remove a reference to

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<sup>7</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

the annual fees charged prior to January 1, 2017, as that reference is now irrelevant.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>9</sup> 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 Exchange believes that the proposed listing standard is consistent with Section 6(b)(5) of the Exchange Act in that it contains requirements in relation to the listing of Subscription Receipts that provide adequate protections for investors and the public interest. In particular, the Exchange believes that investors are significantly protected by the requirements in the proposed rule that: (i) the proceeds of the Subscription Receipt offering must be held in an interest-bearing custody account controlled by an independent custodian pending consummation of the Specified Acquisition, (ii) the custody account must be liquidated and the funds distributed pro rata to the Subscription Receipt holders if the Specified Acquisition is not consummated within 12 months, and (iii) any interest earned on the custody account must be

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

distributed pro rata to the Subscription Receipt holders upon such liquidation.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of security and that will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that the proposed amendment to the fees set forth in Section 902.06 of the Manual is consistent with Section 6(b)(4)<sup>10</sup> of the Exchange Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. The proposed fees are the same as those applicable to other similar short-term securities as currently applied under Section 902.06.

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 Exchange Act. The purpose of the proposed rule is to enhance competition by providing issuers and investors with an additional type of listed security that is not currently available on any domestic listing exchange and, as such, the Exchange does not believe it imposes any burden on competition.

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.

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<sup>10</sup> 15 U.S.C. 78f(b)(4).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-31 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-2017-31. 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-2017-31 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.<sup>11</sup>

Robert W. Errett  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

Added text underlined  
Deleted text in [brackets]  
Amendment No. 1 added text in *bold italics*  
Amendment No. 1 deleted text in ~~striketrough~~

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**102.08 Minimum Numerical Standards – Subscription Receipts**

NO CHANGES

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**202.06 Procedure for Public Release of Information; Trading Halts**

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NO CHANGES

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**802.01B Numerical Criteria for Capital or Common Stock (including Equity Investment Tracking Stock).—**

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Criteria for Preferred Stock, Guaranteed Railroad Stock and Similar Issues

The Exchange will promptly initiate suspension and delisting procedures with respect to Preferred Stock, Guaranteed Railroad Stock and Similar Issues if:

- (i) the aggregate market value of publicly-held shares is less than \$2,000,000, or
- (ii) the number of publicly-held shares is less than 100,000.

These types of securities are not eligible to follow the procedures outlined in Sections 802.02 and 802.03.

**Criteria for Subscription Receipts Listed Under Section 102.08**

The Exchange will consider initiating suspension and delisting procedures with respect to Subscription Receipts if:

(i) the number of publicly held shares\* is less than 100,000; or

(ii) the number of holders is less than 100.

\* Shares held by directors, officers, or their immediate families and other Concentrated holdings of 10 percent or more are excluded in calculating the number of publicly held shares.

The Exchange will immediately initiate suspension and delisting procedures with respect to Subscription Receipts if:

*(i) the number of publicly-held shares\* is less than 100,000;*

*(ii) the number of public holders\* is less than 100;*

(iii) the total market capitalization of the Subscription Receipts is below \$15 million over 30 consecutive trading days;

(iv) the issuer's related common equity security ceases to be listed on the Exchange; or

(v) the issuer announces that the Specified Acquisition (as defined in Section 102.08) has been terminated.

*\* Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. "Public holders" exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more.*

An issuer of Subscription Receipts will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to these criteria and any such security will be subject to delisting procedures as set forth in Section 804.

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## **902.06 Listing Fees for Short-Term Securities**

NO CHANGES

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Added text underlined;  
Deleted text in [brackets].

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\* \* \* \* \*

### **102.08 Minimum Numerical Standards – Subscription Receipts**

The Exchange will list Subscription Receipts subject to the following requirements:

(a) The issuer must be an NYSE listed company that is not currently non-compliant with any applicable continued listing standard.

(b) The proceeds of the Subscription Receipts offering are designated solely for use in connection with the consummation of a specified acquisition that is the subject of a binding acquisition agreement (the “Specified Acquisition”).

(c) The proceeds of the Subscription Receipts offering will be held in an interest-bearing custody account controlled by an independent custodian.

(d) The Subscription Receipts will promptly be redeemed for cash (i) at any time that the acquisition agreement in relation to the Specified Acquisition is terminated, or (ii) if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts, or such earlier time as is specified in the operative agreements. If the Subscription Receipts are redeemed, the holders will receive cash payments equal to their proportion share of the funds in the custody account, including any interest earned on those funds.

(e) If the Specified Acquisition is consummated, the holders of the Subscription Receipts will receive the shares of common stock for which their Subscription Receipts are exchangeable.

(f) At the time of initial listing, the Subscription Receipts must have a price per Subscription Receipt of at least \$4.00, a minimum total market value of publicly-held shares\* of \$100 million, 1,100,000 publicly-held shares,\* and 400 holders of round lots.

(g) The sale of the Subscription Receipts and the issuance of the common stock of the issuer in exchange for the Subscription Receipts must both be registered under the Securities Act.

\* Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the

number of publicly-held shares.

\* \* \* \* \*

**202.06 Procedure for Public Release of Information; Trading Halts**

\* \* \* \* \*

**(B) Telephone Alert to the Exchange; Trading Halts**

\* \* \* \* \*

Whenever the Exchange halts trading in a security of a listed company for any of the reasons set forth above or implements any other required regulatory trading halt, the Exchange will also halt trading in (i) any listed Equity Investment Tracking Stock that tracks the performance of such listed company or (ii) any listed Subscription Receipt that is exchangeable by its terms into the common stock of such company.

\* \* \* \* \*

**802.01B Numerical Criteria for Capital or Common Stock (including Equity Investment Tracking Stock).—**

\* \* \* \* \*

Criteria for Preferred Stock, Guaranteed Railroad Stock and Similar Issues

The Exchange will promptly initiate suspension and delisting procedures with respect to Preferred Stock, Guaranteed Railroad Stock and Similar Issues if:

- (i) the aggregate market value of publicly-held shares is less than \$2,000,000, or
- (ii) the number of publicly-held shares is less than 100,000.

These types of securities are not eligible to follow the procedures outlined in Sections 802.02 and 802.03.

**Criteria for Subscription Receipts Listed Under Section 102.08**

The Exchange will immediately initiate suspension and delisting procedures with respect to Subscription Receipts if:

- (i) the number of publicly-held shares\* is less than 100,000;
- (ii) the number of public holders\* is less than 100;

(iii) the total market capitalization of the Subscription Receipts is below \$15 million over 30 consecutive trading days;

(iv) the issuer's related common equity security ceases to be listed on the Exchange; or

(v) the issuer announces that the Specified Acquisition (as defined in Section 102.08) has been terminated.

\* Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. "Public holders" exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more.

An issuer of Subscription Receipts will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to these criteria and any such security will be subject to delisting procedures as set forth in Section 804.

\* \* \* \* \*

### **902.06 Listing Fees for Short-Term Securities**

The Listing Fees and Annual Fees in this section apply to "short-term" securities, or those securities having a term of seven years or less, such as, but not limited to, structured products listed under Section 703.18 (Contingent Value Rights), the equity criteria set out in Section 703.19 (Other Securities) and Section 703.21 (Equity-Linked Debt Securities), and traded on the equity floor of the Exchange. This Section 902.06 does not apply to short-term securities listed under Sections 703.15 (Foreign Currency Warrants and Index Warrants), 703.17 (Stock Index Warrants) [or], 703.22 (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities) or 102.08 (Subscription Receipts).

\* \* \* \* \*

### **Annual Fees**

Annual Fees are based on the total number of securities outstanding per listed issue. The Annual Fee is equal to the greater of the minimum fee or the fee calculated on a per share basis.

Per Share Rate	[\$0.001025] <u>\$0.00105</u> per share [(\$0.00105 as of January 1, 2017)]
Minimum Fee (Except Warrants to Purchase Equity Securities)	[\$15,000 (\$20,000 [as of January 1, 2017])]
Minimum Fee - Warrants to	\$5,000

Purchase Equity Securities

\* \* \* \* \*