

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102201; File No. SR-NYSE-2024-48)

January 15, 2025

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Section 802.01C of the NYSE Listed Company Manual (Price Criteria for Capital or Common Stock) to Restrict the Use of Reverse Stock Splits in Certain Circumstances

I. Introduction

On September 30, 2024, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to amend Section 802.01C (Price Criteria for Capital or Common Stock) of the NYSE Listed Company Manual (“Manual”) to provide that (i) a listed company that falls below the price criteria set forth therein and effects a reverse stock split to regain compliance will not be eligible for a compliance period in certain circumstances, and (ii) a listed company may not effectuate a reverse stock split if it would result in the company falling below continued listing requirements. The proposed rule change was published for comment in the Federal Register on October 17, 2024.³

On November 25, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101306 (Oct. 10, 2024), 89 FR 83738 (“Notice”). Comments on the Notice are available at: <https://www.sec.gov/comments/sr-nyse-2024-48/srnyse202448.htm>.

⁴ 15 U.S.C. 78s(b)(2).

rule change.⁵ On December 20, 2024, the Exchange filed partial Amendment No. 1 to the proposed rule change, and on January 2, 2025, the Exchange withdrew partial Amendment No. 1 and filed partial Amendment No. 2 to the proposed rule change (“Amendment No. 2”).⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange is proposing to amend Section 802.01C of the Manual to provide that (i) a listed company that falls below the price criteria set forth therein and effects a reverse stock split to regain compliance will not be eligible for a compliance period in certain circumstances, and (ii) a listed company may not effectuate a reverse stock split if it would result in the company falling below continued listing requirements.

Section 802.01C of the Manual (“Section 802.01C”) provides that a listed company will be considered to be below compliance standards if the average closing price of a security as reported on the consolidated tape is less than \$1.00 over a consecutive 30 trading-day period (“Price Criteria”).⁷ Under Section 802.01C, once the company is notified that it has fallen below

⁵ See Securities Exchange Act Release No. 101746, 89 FR 95301 (Dec. 2, 2024) (designating January 15, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁶ Amendment No. 2 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nyse-2024-48/srnyse202448-554495-1588362.pdf>. As discussed below, the Exchange’s proposal would prohibit a listed company from effectuating a reverse stock split if the effectuation of such reverse stock split results in the company’s security falling below the continued listing requirements of Section 802.01A of the Manual. In Amendment No. 2, the Exchange proposes to adopt additional rule text to provide that if a company effectuates a reverse stock split in such circumstances, the company would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual and the Exchange would immediately commence suspension and delisting procedures with respect to such security in accordance with Section 804.00 of the Manual.

⁷ While the term “Price Criteria” is used as a defined term in Section 802.01C, the current rule does not actually provide a definition for the term. The Exchange is now proposing to define the term in the rule. See Notice, supra note 3, at 83738.

the Price Criteria, the company must bring its share price and average share price back above \$1.00 by six months following receipt of the notification. A listed company is not eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to this criteria.⁸ The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure the Price Criteria deficiency or be subject to suspension and delisting procedures as set forth in Section 804.00 of the Manual.⁹ The company can regain compliance at any time during the six-month cure period if on the last trading day of any calendar month during the cure period the company has a closing share price of at least \$1.00 and an average closing share price of at least \$1.00 over the 30 trading-day period ending on the last trading day of that month. In the event that at the expiration of the six-month cure period, both a \$1.00 closing share price on the last trading day of the cure period and a \$1.00 average closing share price over the 30 trading-day period ending on the last trading day of the cure period are not attained, the Exchange will commence suspension and delisting procedures as set forth in Section 804.00.¹⁰

Notwithstanding the foregoing, Section 802.01C provides that if a listed company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification,

⁸ Sections 802.02 and 802.03 of the Manual set forth specific procedures for listed domestic companies and listed non-U.S. companies that are identified as being below the Exchange's continued listing criteria. In general, Sections 802.02 and 802.03 of the Manual provide that if the Exchange identifies a company as being below the Exchange's continued listing criteria, the Exchange will notify the company within 10 business days and provide the company with an opportunity to submit a plan to regain compliance with the continued listing standards within 18 months. If the company does not submit a plan within a required deadline, or if the Exchange does not accept a plan, the Exchange will initiate suspension and delisting procedures. If the Exchange accepts a plan, the Exchange will review the company on a periodic basis for compliance with the plan.

⁹ See Section 802.01C. See also Notice, supra note 3, at 83738.

¹⁰ See Section 802.01C. See also Notice, supra note 3, at 83738.

must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The company will be deemed to have regained compliance with the Price Criteria if the price promptly exceeds \$1.00 per share, and the price remains above the level for at least the following 30 trading days.¹¹ The Exchange states that the action taken by a listed company to cure its noncompliance with the Price Criteria that is subject to shareholder approval is generally a reverse stock split.¹²

The Exchange now proposes to amend Section 802.01C to limit the circumstances under which a listed company that fails to meet the Price Criteria may be provided a compliance period under Section 802.01C. Specifically, the Exchange proposes that, notwithstanding the general ability of a listed company to utilize a reverse stock split as a mechanism for regaining compliance with the Price Criteria, if a listed company's security fails to meet the Price Criteria and the company (i) has effected a reverse stock split over the prior one-year period¹³ or (ii) has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one, then the company shall not be eligible for any compliance period specified in Section 802.01C and the Exchange will immediately commence suspension and delisting procedures with respect to such security in accordance with Section 804.00 of the Manual.

The Exchange also proposes to amend Section 802.01C to prohibit a listed company from effectuating a reverse stock split, for purposes of regaining compliance with the Price Criteria or otherwise, if the effectuation of such reverse stock split results in the company's security falling

¹¹ See Section 802.01C. See also Notice, supra note 3, at 83738.

¹² See Notice, supra note 3, at 83738.

¹³ The Exchange states that, for the avoidance of doubt, the proposed rule would apply to a listed company even if the company was in compliance with the Price Criteria at the time of its prior reverse stock split. See Notice, supra note 3, at 83738 n.4.

below the continued listing requirements of Section 802.01A of the Manual (Distribution Criteria for Capital or Common Stock (including Equity Investment Tracking Stock)). If a listed company effectuates a reverse stock split notwithstanding this limitation, the company would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual¹⁴ and the Exchange would immediately commence suspension and delisting procedures with respect to such security in accordance with Section 804.00 of the Manual.¹⁵

In support of its proposal, the Exchange states that it has observed that some companies, typically those in financial distress or experiencing a prolonged operational downturn, engage in a pattern of repeated reverse stock splits.¹⁶ The Exchange states that such behavior is often indicative of deep financial or operational distress within such companies, rendering them inappropriate for trading on the Exchange for investor protection reasons.¹⁷ The Exchange states that it has observed that the challenges facing such companies generally are not temporary and may be so severe that the company is not likely to maintain compliance with the Price Criteria on a sustained basis.¹⁸ Accordingly, the Exchange states the proposal protects investors and the public interest by enhancing the Exchange's listing requirements. In particular, the Exchange states that the proposal limits the ability of listed companies with a history of having a low stock

¹⁴ See supra note 8. A company identified as being below the continued listing requirements of Section 802.01A of the Manual ("Distribution Criteria") would normally be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual, including to submit a plan to regain compliance with the Exchange's continued listing criteria. See Sections 802.01A, 802.02 and 802.03 of the Manual. Section 802.01A of the Manual sets forth alternative distribution criteria for continued listing based on number of total stockholders, average monthly trading volume, or number of publicly held shares, as applicable.

¹⁵ See Amendment No. 2, supra note 6.

¹⁶ See Notice, supra note 3, at 83739.

¹⁷ See id.

¹⁸ See id. The Exchange further states that the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons within a short period of time. See id.

price to use reverse stock splits as a means to remain qualified for listing and will result in the delisting of companies whose history of recurring inability to maintain price compliance is indicative of their financial instability and unsuitability for continued listing.¹⁹ Furthermore, the Exchange states that it is consistent with the protection of investors and the public interest to delist any company that takes a deliberate action that causes it to fall below an Exchange listing standard, including the effectuation of a reverse split that causes a company to fall below the Distribution Criteria.²⁰

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,²² which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and with Section 6(b)(7) of the Act,²³ which requires, among other things, that the rules of a national

¹⁹ See id.

²⁰ See id.

²¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78f(b)(7).

securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.

The development and enforcement of meaningful listing standards²⁴ for an exchange is of critical importance to financial markets and the investing public. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²⁵

The Exchange's proposal would eliminate the compliance periods available to listed companies to cure a Price Criteria deficiency in certain circumstances, which could lead to earlier delisting of companies that fail to comply with the Price Criteria. In particular, a listed company that fails to meet the Price Criteria and that has effected a reverse stock split during the prior one-year period or has effected reverse stock splits with a cumulative ratio of 200 shares or

²⁴ The Commission notes that this reference to "listing standards" is referring to both initial and continued listing standards.

²⁵ See, e.g., Securities Exchange Act Release Nos. 101271 (Oct. 7, 2024), 89 FR 82652, 82653 n.23 and accompanying text (Oct. 11, 2024) (SR-NASDAQ-2024-029) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Modify the Application of Bid Price Compliance Periods); 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR-NASDAQ-2020-001) (Order Approving a Proposed Rule Change To Modify the Delisting Process for Securities With a Bid Price at or Below \$0.10 and for Securities That Have Had One or More Reverse Stock Splits With a Cumulative Ratio of 250 Shares or More to One Over the Prior Two-Year Period); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR-NASDAQ-2019-089) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 5815 To Preclude Stay During Hearing Panel Review of Staff Delisting Determinations in Certain Circumstances). See also Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR-NYSE-2017-31) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts) (stating that "[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market" and that "[o]nce a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue ... so that fair and orderly markets can be maintained.").

more to one over the prior two-year period would not be eligible for any compliance periods under Section 802.01C²⁶ and the Exchange would immediately commence suspension and delisting of such company. In addition, the Exchange proposes to immediately commence suspension and delisting procedures with respect to any company that effects a reverse stock split that results in the company falling below the Distribution Criteria.

The Exchange's proposal is reasonably designed to enhance its continued listing standards, thereby protecting investors and the public interest. In particular, the proposal is reasonably designed to curtail the use of reverse stock splits to inappropriately delay delisting and thereby allow a company's security to remain listed on the Exchange for an extended period despite not being able to maintain compliance with the Price Criteria or Distribution Criteria. As discussed above, the Exchange states that engaging in a pattern of repeated reverse stock splits is often indicative of deep financial or operational distress that renders a company inappropriate for trading on the Exchange for investor protection reasons.²⁷ The Exchange can reasonably conclude from its experience that a listed company that has effected a reverse stock split over the prior one-year period or has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one and is unable to maintain compliance with the Price Criteria, or a listed company that effects a reverse stock split that results in the company being unable to maintain compliance with the Distribution Criteria, indicates serious difficulties within such company that are likely to put continued downward pressure on the stock price, such that the company is less likely to regain compliance within any compliance periods. In this respect, the proposal is appropriately targeted to those listed companies' securities that are

²⁶ See supra notes 8-11 and accompanying text.

²⁷ See Notice, supra note 3, at 83739.

more likely to have serious recurrent issues in regaining and maintaining compliance with the Exchange's Price Criteria and other continued listing standards.

The Exchange's proposal is reasonably designed to further investor protection by limiting the ability of listed companies with a history of having a low stock price to use reverse stock splits to remain qualified for listing.²⁸ The Exchange states that it has observed that the challenges facing such companies generally are not temporary and may be so severe that the companies are not likely to regain or maintain compliance on a sustained basis.²⁹ In addition, the Exchange states that the price concerns with such companies can be a leading indicator of other listing compliance concerns, and that these companies often become subject to delisting for other reasons within a short period of time.³⁰ Further, the continued listing of low-priced securities raises concerns that these securities may not have sufficient public float, investor base, and trading interest to promote fair and orderly markets and relatedly may have heightened susceptibility to manipulation. Given these concerns, the Exchange's proposal to immediately suspend and delist a company that is non-compliant with the Price Criteria or Distribution Criteria in the circumstances described above is appropriate and consistent with Section 6(b)(5) of the Act.

While the Commission recognizes that the Exchange delisting process is in part designed to allow listed companies experiencing temporary financial and/or business issues to regain compliance with continued listing standards, the proposal reasonably balances the intent of the delisting process with the need to prevent companies from taking advantage of the delisting

²⁸ See id.

²⁹ See id.

³⁰ See id.

process for an extended period of time despite not being able to comply with Exchange standards for continued listing, which is contrary to the goal of protecting investors and the public interest.

The proposed rule change, as modified by Amendment No. 2, is also consistent with Section 6(b)(7) of the Act³² in that it provides a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered. A listed company whose securities are subject to immediate suspension and delisting under the proposal would still be able to seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange as set forth in Section 804.00 of the Manual. Accordingly, the proposal is appropriate in light of the need to protect investors and the public interest and the Exchange's process for review of a delisting determination will continue to provide a fair procedure for the review of delisting determinations in accordance with Section 6(b)(7) of the Act.

Finally, the comment letters received on the proposal were generally supportive.³¹

In sum, the Exchange's proposal appropriately identifies securities listed on its market that are more likely to have serious recurrent issues in regaining and maintaining compliance with the Exchange's continued listing standards, including the Price Criteria, and proposes

³¹ See Letters from Barbara Rairden, dated Oct. 15, 2024, and Anonymous, dated Oct. 15, 2024. See also Letter from the American Consumer and Investor Institute, dated Nov. 4, 2024 ("ACII Letter"), at 2 (stating that recent Exchange proposals, including SR-NYSE-2024-48, to amend listing rules to address concerns regarding "exchange-listed penny stocks and reverse stock splits" are "another incremental step towards protecting retail investors from the risks associated with such penny stocks and reverse splits"). This commenter also expresses support for additional proposals to enhance exchange listing standards to further address investor protection concerns, particularly those involving Nasdaq and NYSE listed companies with low-priced securities. In particular, this commenter recommends that the Commission engage with the industry, including a review of suggestions that have already been made, and update the penny stock rules and exchange listing standards. See ACII Letter at 4 (citing to Petition for Rulemaking on Exchange Listings of Penny Stocks filed with the Commission by Virtu Financial, Inc., dated July 15, 2024; and Letter from Ellen Greene, Managing Director and Joseph Corcoran, Managing Director, Securities Industry and Financial Markets Association, dated Oct. 8, 2024 (available at <https://www.sec.gov/comments/sr-nasdaq-2024-045/srnasdaq2024045-527615-1515662.pdf>)). These additional recommendations are not before the Commission in the NYSE proposal being considered herein. In approving this proposal, the Commission is finding the proposal before us is consistent with the Act.

reasonable changes to shorten the time that such non-compliant securities can remain trading on the Exchange, thereby protecting investors and the public interest in accordance with Section 6(b)(5) of the Act,³² while at the same time maintaining a fair procedure for affected listed companies to seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange in accordance with Section 6(b)(7) of the Act.³³ For these reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-48 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-NYSE-2024-48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

³² 15 U.S.C. 78f(b)(5).

³³ 15 U.S.C. 78f(b)(7).

comments on the Commission’s internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR- NYSE-2024-48, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the Federal Register. The changes in Amendment No. 2 provide greater clarity to the proposal. The proposed additional rule text in Amendment No. 2 clarifies the delisting process applicable to a company that effectuates a reverse stock split where the effectuation of such reverse stock split results in the company’s security falling below the Distribution Criteria and is consistent with the Exchange’s statements in the Notice.³⁴

³⁴ See Notice, supra note 3, at 83739 (“Furthermore, the Exchange proposes that a listed company would not

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³⁵ to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁶ that the proposed rule change (SR-NYSE-2024-48), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Sherry R. Haywood,

Assistant Secretary.

be allowed to effectuate a reverse stock split, for purposes of regaining compliance with the Price Criteria or otherwise, if the effectuation of such reverse stock split results in the company's security falling below the continued listing requirements of Section 802.01A. If a listed company effectuated a reverse stock split notwithstanding this proposed limitation, the Exchange would promptly commence suspension and delisting procedures with respect to such company in accordance with Section 804.00.”).

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ 17 CFR 200.30-3(a)(12).