

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68276; File No. SR-NYSE-2012-54)

November 20, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the Listed Company Manual Section 204.00 to Create a Uniform Method for a Company to Provide Notice to the Exchange When Required Pursuant to Sections 204.06, 204.12, 204.17, 204.21, 204.22, 311.01, 401.02, and 601.00 of the Listed Company Manual, and to Make Conforming Changes

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 November 8, 2012, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 to amend Section 204.00 to create a uniform method for a company to provide notice to the Exchange when required to do so pursuant to Sections 204.06, 204.12, 204.17, 204.21, 204.22, 311.01, 401.02, and 601.00 of the Listed Company Manual, and to make conforming changes. In addition, the Exchange proposes to make administrative changes to the “Guide to Requirements for Submitting Data to the Exchange,” which is set forth in the Introduction to the Listed Company Manual. The text of 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.

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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.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 204.00 of the Listed Company Manual to create a uniform method for a company to provide notice to the Exchange when required to do so pursuant to Sections 204.06, 204.12, 204.17, 204.21, 204.22, 311.01, 401.02, and 601.00 of the Listed Company Manual, and to make conforming changes. In addition, the Exchange proposes to make administrative changes to the “Guide to Requirements for Submitting Data to the Exchange,” which is set forth in the Introduction to the Listed Company Manual.

A company is currently permitted to provide notices of certain events to the Exchange through specified methods – for example, by telephone, facsimile, telegram, letter, or email – that vary from section-to-section of the Listed Company Manual. In some cases, multiple notices are required, for example telephone notice followed by a facsimile confirmation. The Listed Company Manual currently provides the following methods for providing notice to the Exchange:

Section	Current Method
204.00 Notice to and Filings with the Exchange (notice in connection with certain actions or events as specified in Sections 204.01 through 204.25)	Notice methods include fax, telephone, telegram, and letter
204.06 Closing of Transfer Books	No method specified
204.12 Dividends and Stock Distributions (notice of dividend action or action relating to a stock distribution)	Notice methods include fax, telephone, telegram, and letter
204.17 Meetings of Shareholders	No method specified
204.21 Record Date (notice of the fixing of a date for the taking of a record of shareholders or for the closing of transfer books)	Notice methods include fax, telephone, telegram, and letter
204.22 Redemption of Listed Securities	No method specified
311.01 Publicity and Notice to the Exchange of Redemption (notice of corporate action which will result in, or which looks toward, either the partial or full call for redemption of a listed security)	Notice methods include fax and telephone
401.02 Notice to the Exchange (notice of dates set in connection with the calling of any meeting of shareholders, including changes in record date)	Notice methods include telephone and writing or fax
601.00 Services to be Provided by Transfer Agents and Registrars (notice by transfer agents of the number of shares outstanding at the end of each calendar quarter)	Notice methods include fax and email

The Exchange believes that establishing uniform methods to provide a single notice to the Exchange when required pursuant to the rules specified in the chart above will simplify the notification process and help to ensure that all notices will be received and managed more efficiently. Accordingly, the Exchange proposes to replace references in the Listed Company Manual in the Introduction and the Sections set forth above that describe current notification methods with references to Section 204.00. Section 204.00 will provide that if a provision of the Listed Company Manual requires a company to give notice to the Exchange pursuant to Section

204.00, the company shall provide such notice through a web-based communication system (e.g., an email address or an internet portal) specified by the Exchange on its website.<sup>4</sup> The Exchange believes that this web-based communication system is generally more reliable than telegram, telephone, or facsimile notice and, as such, will no longer permit notice by those methods other than as otherwise specified in the Listed Company Manual.<sup>5</sup> When a rule does not specify some other notification method, companies may utilize the methods set forth in Section 204.00 or any other reasonable method, such as telephone, fax, or mail. In addition, however, Section 204.00 would provide that, in emergency situations, notification may instead be provided by telephone and confirmed by facsimile as specified by the Exchange on its website.<sup>6</sup> However, the

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<sup>4</sup> Upon approval of this proposed rule change, the Exchange plans to specify that notices required to be provided pursuant to Section 204.00 should be submitted through [www.egovdirect.com](http://www.egovdirect.com), a web portal operated by the Exchange, or to one of the email addresses designated by the Exchange. The Exchange will post information about any web portal or email address used for this purpose in a prominent position on its website. The proposed rule text provides that the Exchange will promptly update and prominently display that posting if the applicable web portal or email address changes at any time. At the time the proposed rule change takes effect, the Exchange plans to send a notice to its listed companies clearly explaining the means by which a notification can validly be made pursuant to Section 204.00. The Exchange will also post this notice in a prominent position on its website. If the Exchange modifies the permitted means of complying with Section 204.00 in the future, the Exchange will send a notice to its listed companies to explain such modification and will amend the notice posted on its website to reflect that modification. The proposed rule text would also advise issuers to consult their Exchange representative if they have any questions about how to comply with the applicable notification requirements.

<sup>5</sup> The Exchange also proposes to delete the word “written” from the heading for Section 204.00 and from the first sentence of the section. The purpose of the change is to eliminate any potential confusion as to whether notices provided through a web-based communication system constitute “written” notices.

<sup>6</sup> Under Section 204.00, an emergency situation would include lack of computer or internet access; a technical problem on the systems of either the listed company or the Exchange; or an incompatibility between the systems of the listed company and the Exchange. As stated in Footnote 4 *supra*, the proposed rule text also advises issuers to consult their Exchange representative if they have any questions about how to comply with the applicable notification requirements.

Exchange will continue to require under Section 202.06 that a company provide advance notice of a material event or rumor by telephone. Section 202.06 currently provides that such telephonic notice should be accompanied by an email transmission of the content of the notice. Instead of Section 202.06's current general reference to the Exchange receiving the notice via email, the Exchange proposes to amend Section 202.06 to specify that such notice should be given through the Web-based notification methods specified in Section 204.00.<sup>7</sup> Section 204.00 currently contains a general directive to follow the telephone alert procedures set forth in Section 202.06(B). The Exchange proposes to conform this statement to the applicable provision in Section 202.06(B) by revising it to make it clear that the telephone alert procedures set forth in Section 202.06(B) are applicable when there is a material event or a statement dealing with a rumor which calls for immediate release which is made shortly before the opening or during market hours (presently 9.30 A.M. to 5.00 P.M., New York time).

The Exchange notes that there are numerous notification requirements in Sections 204.01—204.25, but that the web-based notification procedure required by proposed Section 204.00 would only be applicable where the relevant subsection as listed above specifically provided that it was. The Exchange believes that this is a reasonable approach, as the provisions in Sections 204.01—204.25 with respect to which the procedures of Section 204.00 would be required all relate to matters where timely notification is essential to the ability of investors to arrange to be holders of a security on the record date for a distribution or shareholder meeting. The other provisions of Section 204.01—204.25 relate to matters with respect to which the Exchange needs to be informed promptly, such as a change in transfer agent or trustee (Section

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In addition, the Exchange also proposes to make cross-references in the amended sections of the Listed Company Manual more consistent by using references to a "Section" rather than a "Paragraph."

204.02) or change in auditors (Section 204.03), but which do not give rise to the possibility that the failure to be informed immediately could materially disadvantage investors in the same way that the need to take timely action to be a security holder on a record date does. As such, the Exchange believes that it is reasonable to afford companies more flexibility with respect to how companies comply with these other notification requirements than would be the case under the web-based notification provision of Section 204.00.

The Exchange also proposes to make two clarifying changes in connection with the proposed amendments to Section 204.00. First, the Exchange proposes to amend the guidance on press releases in the “Guide to Requirements for Submitting Data to the Exchange,” which is set forth in the Introduction to the Listed Company Manual. The purpose of the change is to conform the guidance in the Guide with the corresponding requirement under Section 202.06. As proposed, the revised guidance will state that, where material corporate developments are disclosed between 9.00 a.m. and 5.00 p.m. EST, verbal communication should be given to the NYSE at least 10 minutes prior to public release of the information and a copy of the text of the announcement should be promptly conveyed to the NYSE at least 10 minutes prior to release. Second, the Exchange proposes to delete a paragraph of Section 311.01, which sets forth requirements for notifying the Exchange of redemptions, providing that, where possible, a redemption notice should be delivered by hand and, where hand delivery is not possible, the notification should be made telephonically and followed by a confirmatory fax. This provision conflicts with a provision earlier in Section 311.11 which provides that companies should provide notice of redemptions to the Exchange by the means provided in Section 202.06(B), i.e., by telephone and transmission of the text of the notice in accordance with proposed Section 204.00. The purpose of the change is to eliminate any potential confusion as to the actual notice

requirements because Section 311.01 also directs listed companies to comply with the Exchange's timely alert procedures.

Finally, the Exchange proposes to make three administrative changes to the "Guide to Requirements for Submitting Data to the Exchange. First, the Exchange proposes to amend from six (6) to three (3) the number of copies of a proxy statement that a listed company must submit to the Exchange. The Exchange has determined that three copies of the proxy statement is sufficient for the Exchange's review purposes and that the proposed amendment would reduce an administrative burden on listed companies. Second, the Exchange proposes to change the name of the item "Shareholders' Meeting Notice" to "Shareholders' Meeting/Notice of Record Date or Change of Record Date." The Exchange believes this amendment would assist listed companies in their compliance with the corresponding obligation by clarifying the meaning of the item. Third, the Exchange proposes to amend the description of the due date for the item "Shareholders' Meeting/Notice of Record Date" so that it conforms with the due date for the item "Dividend Notification." The Exchange believes this amendment also would assist listed companies in their compliance with the corresponding obligation by clarifying the terms of the due date.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is 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.

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

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

The Exchange believes the proposed rule change will increase the clarity of listed companies' obligations under the Listed Company Manual, and that the proposed rule change will make it easier for listed companies to submit notices to the Exchange. In addition, the Listed Company Manual currently provides various methods for submitting notices to the Exchange, and the Exchange believes that making the methods uniform will reduce confusion for listed companies. The Exchange believes that creating a more efficient and effective method for submitting notices to the Exchange will further its objective of removing impediments to maintaining accurate and timely information about its listed companies, which will in turn benefit investors and the public.

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 Act.

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 within such longer period (i) as the Commission may designate up to 90 days of such date 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-2012-54 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR- NYSE-2012-54. 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 will also 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 publicly available. All submissions should refer to File Number SR- NYSE-2012-54 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>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).