

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81102; File No. SR-NYSE-2017-31)

July 7, 2017

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) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given on June, 26, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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, 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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").

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.

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 shares³ 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.

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 consider initiating suspension and delisting procedures when the number of publicly-held shares is less than 100,000 or the number of holders is less than 100. In addition, Subscription Receipts will be subject to immediate suspension and delisting if (i) the total market capitalization of the Subscription Receipts is below \$15 million over 30 consecutive trading days (ii) the related common equity security ceases to be listed or (iii) 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 802.01 [sic] with respect to these criteria, and any such security will be subject to delisting procedures as set forth in Section 804.

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.

³ 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 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.⁴

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.

2. Statutory Basis

⁴ 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 Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,⁶ 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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)⁷ 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.

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:

⁷ 15 U.S.C. 78f(b)(4).

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-31 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-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.⁸

Eduardo A. Aleman
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).