SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81856; File No. SR-NYSE-2017-31)

October 11, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; 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

I. Introduction

On June 26, 2017, New York Stock Exchange LLC ("NYSE" or the "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 the NYSE Listed Company Manual ("Manual") to adopt initial and continued listing standards for Subscription Receipts. The proposed rule change was published for comment in the Federal Register on July 13, 2017.[3] On October 3, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice of Amendment No. 1 and approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 81102 (July 7, 2017), 82 FR 32413 ("Notice").

4 Amendment No. 1 amends the original filing to: (1) correct a reference in the purpose section of the filing from a reference to Section 802.01 of the Manual to a reference to Sections 802.02 and 802.03 of the Manual; (2) change the proposed continued listing holder requirement from 100 total holders to 100 public holders; (3) 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; and (4) make clear that Subscription Receipts convert into primary common stock of the listed company. When the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 to the public comment file for SR-NYSE-2017-31 (available at: https://www.sec.gov/comments/sr-nyse-2017-31/nyse201731.htm).

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange has proposed to adopt initial and continued listing standards for the listing of Subscription Receipts. In its proposal, NYSE generally described the structure of Subscription Receipts and noted that Subscriptions Receipts have been used as a financing technique by Canadian public companies.[5] According to the Exchange, Canadian companies typically use Subscription Receipts as a means of providing cash consideration in merger or acquisition transactions.[6] 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 will have their Subscription Receipts converted into a specified number of shares of the primary listed class of common stock of the issuer.[7] If the acquisition does not close, the Subscription Receipts are redeemed for their original purchase price plus any interest accrued on the custody account.

The Exchange stated in its proposal that Subscription Receipts provide a contingent form of financing for an issuer that only becomes permanent if the specified acquisition is completed.[8] In contrast, the Exchange noted that 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.[9]

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5 See Notice, supra note 3, at 32413.

6 See id.

7 See Amendment No. 1.

8 See Notice, supra note 3, at 32413.

9 See id.

The Exchange further noted that 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.

The Exchange has proposed the following initial listing standards for Subscription Receipts:[10]

(a) 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,[11] and 400 holders of round lots (i.e., 100 securities).

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

(c) The proceeds of the Subscription Receipts offering must be 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").

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

(e) The Subscription Receipts must promptly be redeemable 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 must receive cash payments equal to their proportionate share of the funds in the custody account, including any interest earned on those funds.

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10 See id.

11 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. See proposed Sections 102.08 and 802.01B of the Manual.

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

(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 of 1933.[12]

The Exchange has also proposed to amend Section 802.01B of the Manual to include continued listing standards applicable to Subscription Receipts listed under proposed Section 102.08 of the Manual. In its filing, as modified by Amendment No. 1, the Exchange proposed to 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;[13] (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 Sections 802.02 and 802.03 of the Manual with respect to these criteria,[14] and any such

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[12] See 15 U.S.C. 77a et seq.

[13] In adopting a continued listing requirement of 100 public holders, the Exchange notes that this is similar to other exchange continued listing standards. See, e.g., NASDAQ Marketplace Rule 5460(a)(4). See also Section 802.01D (providing continued listing standards for warrants, among other specialized securities). For purposes of the continued listing requirements for Subscription Receipts, "public holders" exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more. See proposed Section 802.01B of the Manual.

[14] Sections 802.02 and 802.03 of the Manual set forth procedures for listed companies to submit a plan, which must be approved by the Exchange, to bring the listed company into conformity with a continued listing standard within eighteen months of receiving a letter of non-compliance. As noted above, an issuer of Subscription Receipts will not be eligible to utilize the procedures in Sections 802.02 or 802.03 of the Manual to submit a

security will be subject to delisting procedures as set forth in Section 804 of the Manual.[15] The Exchange also stated that Subscription Receipts will be subject to potential delisting for all of the reasons generally applicable to operating companies under Section 802.01 of the Manual.[16] The Exchange further noted in its proposal 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.[17] Further, if the Specified Acquisition is consummated, as noted above, the Subscription Receipts convert into the primary listed class of common stock of the issuer, which will thereafter be subject to all of the continued listing requirements applicable to a primary class of common stock listed on NYSE.[18]

The Exchange also has proposed 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.[19]

The Exchange represented that it 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

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plan of compliance and instead will be subject to the procedures in Section 804 of the Manual.

15 Section 804 of the Manual sets forth the applicable due process procedures, including appeal rights, for the suspension and delisting of the securities of a listed company.

16 See Notice, supra note 3, at 32414.

17 See id.

18 See Amendment No. 1. See also Section 802.01 of the Manual (providing the continued listing criteria for capital or common stock listed on NYSE).

19 See Notice, supra note 3, at 32414.

common equity securities into which they are convertible.[20] Additionally, the Exchange states that it 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 law.

Finally, the Exchange has proposed to apply the listing fees for "short-term" securities (i.e., securities with a life of seven years or less), set forth in Section 902.06 of the Manual, to Subscription Receipts because these securities, as noted above, will be short-term securities that have a maximum term of twelve months.[21] The Exchange has therefore proposed to amend Section 902.06 of the Manual to make it explicit that it will apply to Subscription Receipts. Finally, the Exchange proposes to amend Section 902.06 of the Manual to remove a reference to the annual fees charged prior to January 1, 2017, as that reference is now irrelevant.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[22] which requires that an exchange have rules designed to, among other things, promote just and equitable principles of trade, remove impediments to an perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customers, issuers, brokers,

20 See id.

21 See id.

22 15 U.S.C. 78f(b)(5).

or dealers.[23]

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

Subscription Receipts, as discussed by the Exchange in its proposal, are a financing technique to fund a Specified Acquisition. As NYSE noted in its filing, an issuer could sell equity securities to fund an acquisition, but if the acquisition doesn't close, investors will still experience dilution in their holdings. Subscription Receipts allow investors the right to invest in the common stock of the listed company upon consummation of a Specified Acquisition. If the deal is not consummated within a short time frame of 12 months or less, the Subscription Receipt holders receive their pro rata share of the offering proceeds plus interest. In this sense, Subscription Receipts could be viewed as a security with characteristics of both equity and debt and are similar, but not identical to, other contingent securities with a right to receive common

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

stock, such as warrants. At the time investors purchase a Subscription Receipt they will also have information about the Specified Acquisition and are making a decision to purchase stock in the listed post-acquisition company.

To address these unique characteristics, as discussed in more detail below, the Exchange has proposed to adopt new Section 102.08 to list Subscription Receipts, and specified continued listing standards. The proposed standards would permit NYSE to list, and continue to list, Subscription Receipts that meet specific criteria, including market value, distribution, and price requirements, which should help to ensure that the Subscription Receipts have sufficient public float, investor base, and liquidity to promote fair and orderly markets. In addition, issuers of Subscription Receipts would have to comply with other investor protection criteria in order to list Subscription Receipts, such as, among others, holding proceeds in a custodial account controlled by an independent custodian and providing shareholders with cash redemption rights should the Specified Acquisition be terminated or not close within 12 months.

The Commission believes that the proposed initial and continued listing standards for Subscription Receipts are consistent with the requirements of the Act, including the protection of investors and the promotion of fair and orderly markets.

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,[24] and 400 holders of round lots (i.e., 100 securities). The Commission notes that the distribution criteria is the same that currently applies to the listing of common stock in connection with an initial public offering under NYSE listing rules and that the $100

[24] 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. See proposed Sections 102.08 and 802.01B of the Manual.

million market value of publicly-held shares requirement is similar to the requirements for other initial listing of securities on the Exchange.[25] The Commission believes that these standards should help ensure that a sufficient market, with adequate depth and liquidity, exists for the initial listing of Subscription Receipts.[26]

Similarly, the Commission believes the Exchange's proposed continued listing standards for Subscription Receipts are consistent with the requirements of the Act and the protection of investors. Under the amended proposal, 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,[27] (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.[28] In addition, Subscription Receipts will be subject to potential delisting for all of the reasons generally applicable to operating companies, including those outlined in Section 802.01D of the Manual, which discusses the factors and criteria that may result in delisting, and may also be subject to delisting at the time of closing of the related acquisition pursuant to the backdoor listing provisions of Section 703.08 of the Manual. The

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25 See Sections 102.01A and 102.01B of the Manual.

26 Because the issuer of the Subscription Receipt is already listing its primary common stock on the Exchange, it must comply with the continued listing standards for capital and common stock as well as the corporate governance requirements applicable to listed companies.

27 For purposes of the continued listing requirements for Subscription Receipts, "public holders" exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more. See proposed Section 802.01B of the Manual.

28 The Commission notes that an issuer of Subscription Receipts will not be eligible to follow the evaluation and follow-up procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to these criteria, and any such security will be subject to delisting procedures as set forth in Section 804 of the Manual.

Commission notes the application of the backdoor listing provision will help to ensure that companies that would not otherwise qualify for original listing on the Exchange could not list, for example, by merging with a listed company.

The Commission believes that these standards, taken together, should help ensure that a sufficient market, with adequate depth and liquidity, exists for the continued listing of Subscription Receipts and are similar to the continued listing standards for other securities that have similar characteristics.[29] The Commission also notes that once the Specified Acquisition has occurred and a Subscription Receipt is converted to common stock, that common stock is subject to the continued listing requirements for capital or common stock in Section 802.01of the Manual. [30]

In addition to the quantitative listing requirements proposed for Subscription Receipts, the proposed initial and continued listing standards also include additional protections for Subscription Receipt holders. For example, the issuer of Subscription Receipts must be an NYSE listed company that is not currently non-compliant with any applicable continued listing standard and must continue to be listed on the Exchange throughout the time the Subscription Receipts are traded on the Exchange. The proposed rules also provide that whenever the Exchange 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 Commission believes that these additional requirements should protect investors and

[29] See, e.g., Section 802.01D of the Manual (providing the continued listing standards for certain types of specialized securities, including warrants).

[30] See Section 802.01 of the Manual. See also Amendment No. 1.

the public interest, consistent with Section 6(b)(5) of the Act, by assuring that information with respect to the listed company issuing the Subscription Receipts is publicly available and that the issuing company is meeting all continued listing standards, including corporate governance requirements, of the Exchange. In addition, these requirements should help assure that the Exchange has a listing relationship with, and direct access to information from, the issuer of the Subscription Receipts. Among other things, this direct relationship the Exchange has with the listed company issuing the Subscription Receipts will help to ensure that the Exchange will receive information in a timely manner to halt trading in the Subscription Receipts when there is a material news, or other regulatory, trading halt imposed on the common stock, and other securities, of the listed company.

There are additional protections for investors in the proposed standards. These include that all the proceeds of the Subscription Receipts offering must be designated solely for use in connection with the consummation of a Specified Acquisition pursuant to a definitive acquisition agreement, the material terms of which would be subject to disclosure. Additionally, the proceeds of the Subscription Receipts offering must also be held in an interest-bearing custody account by an independent custodian and holders will promptly redeem the Subscription Receipts for cash, equal to the holder’s proportionate share of the funds in the custody account plus any interest earned, at any time the Specified Acquisition is terminated or if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts (or such earlier time as specified in the operative agreements). 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. Finally, the listing standards specifically state and remind issuers that the sale of 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 of 1933.[31] This is important because shareholders, at the time they purchase a Subscription Receipt, are making an investment decision to also purchase the common stock of the merged listed company should the Specified Acquisition be consummated, within twelve months or such shorter specified time period. Therefore, it is important to have registration and disclosure under the Securities Act of both the Subscription Receipt and the related common stock. Based on the above, the Commission believes that specifically setting forth the Securities Act registration requirements in the NYSE rules for listing Subscription Receipts is consistent with the requirements of Section 6(b)(5) of the Act to further investor protection and the public interest.

The Exchange will also 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. Since the Subscription Receipts are related to, and represent an interest in, the common stock of the post-acquisition listed company, this enhanced surveillance should help to monitor the trading activity in both the issuer's listed common stock and the Subscription Receipts.[32]

The Commission believes that these safeguards and standards should help to ensure that the listing, and continued listing, of any Subscription Receipts on NYSE will be consistent with investor protection, the public interest, and the maintenance of fair and orderly markets. In this regard, the Commission expects NYSE to thoroughly review any potential listing of Subscription

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31 See 15 U.S.C. 77a et seq.

32 As noted above, the Exchange will also rely on its existing trading surveillances, administered by the Exchange or FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

Receipts to ensure that its listing standards have been met and continue to be met, as well as to monitor trading in the Subscription Receipts and related common stock of the issuer. Based on the foregoing, the Commission finds that the proposed initial and continued listing standards are consistent with the Act.

Finally, the Commission believes that the proposed fees set forth in Section 902.06 of the Manual are consistent with Section 6(b)(4) of the Act,[33] in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees, and other charges, and are not designed to permit unfair discrimination among the Exchange's members, issuers, and other persons using its facilities. The Commission notes that the proposed fees are the same as the fees applicable to similar short term securities under Rule 902.06 of the Manual.

Based on the above, the Commission believes the proposed rule change, as amended, is reasonable and should provide for the listing of Subscription Receipts, with baseline investor protection and other standards. The Commission believes, as discussed above, that NYSE has developed sufficient standards to allow the listing of Subscription Receipts on the Exchange, and finds the proposal consistent with the requirements set forth under the Act, and in particular, Sections (6)(b)(4) and 6(b)(5).[34]

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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

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33 15 U.S.C. 78f(b)(4).

34 15 U.S.C. 78s(b)(4) and (b)(5).

- 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 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 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-2017-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by

Amendment No. 1, prior to the 30th day after the date of publication of the notice of Amendment No. 1 in the Federal Register. As noted above, in Amendment No. 1, the Exchange amended the original filing to correct an incorrect reference to the Manual in the purpose section of the filing, replace the proposed continued listing standard of 100 total holders with 100 public holders, add two additional continued listing standards – the 100,000 publicly-held shares requirement and the 100 public holder requirement – to the immediate suspension and delisting proceeding provisions of Section 804 of the Manual, and provide a clarification that all Subscription Receipts convert into primary common stock of the issuer.

The Commission notes that the revisions in Amendment No. 1 provide additional clarity and specificity to the proposal and do not raise any novel regulatory concerns. In addition, the changes to the continued listing standards strengthen the proposal and are consistent with investor protection. Finally, the Commission notes that the majority of the original proposal was not modified and was subject to a full notice-and-comment period, and no comments were received. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[35]

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[35] 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR-NYSE-2017-31), as modified by Amendment No. 1 thereto, be, and hereby is, approved on an accelerated basis.

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

Eduardo A. Aleman
Assistant Secretary

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36 15 U.S.C. 78s(b)(2).

37 17 CFR 200.30-3(a)(12).