

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80313; File No. SR-NYSE-2017-12)

March 27, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Section 102.01B of the NYSE Listed Company Manual to Modify the Requirements that Apply to Companies that List Without a Prior Exchange Act Registration and that Are Not Listing in Connection with an Underwritten Initial Public Offering

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 March 13, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 102.01B of the NYSE Listed Company Manual (the “Manual”) to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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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.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Section 102.01B of the Manual to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration.

Generally, the Exchange expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off. Companies listing in connection with an IPO must demonstrate that they have \$40 million in market value of publicly-held shares, while companies that are listing upon transfer from another exchange or the over-the counter market or pursuant to a spin-off must demonstrate that they have \$100 million in market value of publicly-held shares.

Section 102.01B currently recognizes that some companies that have not previously had their common equity securities registered under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list their common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares.<sup>4</sup> Footnote (E) of Section 102.01B provides that the Exchange will, on a case by case basis, exercise discretion to list such companies. In exercising this discretion, Footnote (E) provides that the Exchange will determine that such company has met the \$100 million aggregate market value of publicly-held shares requirement

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<sup>4</sup> See NYSE Listed Company Manual, Section 102.01B, Footnote (E).

based on a combination of both (i) an independent third-party valuation (a "Valuation") of the company and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market"). The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market.

Any Valuation used for purposes of Footnote (E) must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. The Exchange will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the Exchange's market value requirement. The Exchange may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

While Footnote (E) to Section 102.01B provides for a company listing upon effectiveness of a selling shareholder registration statement, it does not make any provision for a company listing in connection with the effectiveness of an Exchange Act registration statement in the absence of an IPO or other Securities Act registration. A company is able to become an Exchange Act registrant without a concurrent public offering by filing a Form 10 or an annual report (such as a Form 10-K or Form 20-F) with the SEC. The Exchange believes that it is appropriate to list companies immediately upon effectiveness of an Exchange Act registration statement without a concurrent Securities Act registration provided the applicable company meets all other listing requirements. Consequently, the Exchange proposes to amend Footnote (E) to Section 102.01B to explicitly provide that it applies to companies listing upon effectiveness of an Exchange Act registration statement without a concurrent Securities Act registration, as well as to companies listing upon effectiveness of a selling shareholder registration statement.

The Exchange notes that the requirement of Footnote (E) that the Exchange rely on recent Private Placement Market trading in addition to a Valuation may cause difficulties for certain companies that are otherwise clearly qualified for listing. Some companies that are clearly large enough to be suitable for listing on the Exchange do not have their securities traded at all on a Private Placement Market prior to going public. In other cases, the Private Placement Market trading is too limited to provide a reasonable basis for reaching conclusions about a company's qualification. Consequently, the Exchange proposes to amend Footnote (E) to provide an exception to the Private Placement Market trading requirement for companies with respect to which there is a recent Valuation available indicating at least \$250 million in market value of publicly-held shares. A Valuation of at least two-and-a-half times the \$100 million

requirement provides a basis for concluding that the market value of the company's shares would meet the Valuation standard upon commencement of trading on the Exchange. In addition, the Exchange notes that any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change would foster cooperation and coordination with persons engaged in clearing and settling transactions in securities, thereby facilitating such transactions.

The proposal to permit companies listing upon effectiveness of an Exchange Act registration statement without a concurrent public offering or Securities Act registration is designed to protect investors and the public interest, because such companies would be required to meet all of the same quantitative requirements met by other listing applicants. The proposal to amend Footnote (E) to Section 102.01B to allow companies to avail themselves of that provision without any reliance on Private Placement Market trading is designed to protect investors and the public interest because any company relying solely on a valuation to demonstrate compliance

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

with the market value of publicly-held shares requirement would be required to demonstrate a market value of publicly-held shares of \$250 million, rather than the \$100 million that is generally applicable.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. Rather, the proposed rule change would increase competition for new listings by enabling companies to list that meet all quantitative requirements but are currently unable to list because of the methodology required by the current rules to demonstrate their compliance.

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:

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-12 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-2017-12. 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-2017-12 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>7</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).