SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85812; File No. SR-NYSE-2019-14)

May 9, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Section 703.18 of the Listed Company Manual to Permit the Listing of Event-Based Contingent Value Rights and Make Other Changes to the Listing Standards for Contingent Value Rights

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on April 25, 2019, New York Stock Exchange LLC ("NYSE" or the "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 Section 703.18 of the Listed Company Manual (the "Manual") to expand the circumstances under which a Contingent Value Right may be listed on the Exchange. 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

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

2 15 U.S.C. 78a.

3 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Contingent Value Rights ("CVRs") are unsecured obligations of the issuer providing for a possible cash payment either (i) at maturity based upon the price performance of an affiliate's equity security (a "Price-Based CVR") or (ii) within a specified time period, upon the occurrence of a specified event relating to the business of the issuer of the CVR or an affiliate of such issuer (an "Event-Based CVR"). Section 703.18 of the Manual currently provides only for the listing of Price-Based CVRs. The Exchange proposes the following changes to its listing rules for CVRs:

- To permit the listing of Event-Based CVRs;
- To update the issuer listing standards in Section 703.18 to reflect changes to the initial listing requirements for operating companies referenced in that rule; and
- To modify the delisting provisions to reflect that a CVR will be delisted if its issuer's common stock ceases to be listed on a national securities exchange.

The Exchange proposes to amend Section 703.18 to also provide for the listing of Event-Based CVRs. With the exception of the payment triggering event, Event-Based CVRs are identical in structure to Price-Based CVRs, the listing of which has been permitted under Section 703.18 for many years.

Event-Based CVRs would qualify for listing under the Exchange's current listing standards for "Other Securities." However, the Exchange is filing this proposed rule change because in the 1998 release adopting amendments to Exchange Act Rule 19b-4, which among other things added a definition of "new derivative securities product," the Commission stated that "[u]nder the amendment, if an SRO does not have listing standards, trading rules and procedures for CVRs approved by the Commission, such SRO must submit a proposed rule change for Commission approval, under Section 19(b), to establish listing standards, trading rules and procedures for the CVR product class, prior to listing CVRs."[4]

Price-Based CVRs are generally distributed to shareholders of an acquired company who are receiving shares of the acquirer as acquisition consideration. The Price-Based CVRs provide the acquiree's shareholders with some medium term protection against poor stock price performance of the shares of the acquirer by guaranteeing them a specified cash payment if the acquirer's average stock price is below a specified level at the time of maturity of the Price-Based CVR.

Event-Based CVRs are also typically issued to the shareholders of an acquired entity as consideration in an acquisition transaction. Event-Based CVRs entitle their holders to receive a specified cash payment upon the occurrence of a specified event prior to the maturity date of the Event-Based CVR. The Event-Based CVR provides the shareholders of the acquiree an additional interest in the medium-term performance of the merged entity. A common example of an Event-Based CVR occurs in mergers of life sciences companies, when the CVR payment is triggered by the receipt of FDA approval of a new drug application. Another example of an Event-Based CVR is a CVR whose payment triggering event is the achievement of a specified level of financial performance by the combined entity or by a division of the combined entity representing the assets from the acquired company. Event-Based CVRs, which are transferrable,

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4 Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952, at 70956-57 (December 22, 1998).

have become increasingly common in recent years, especially in connection with mergers of life sciences companies, and the Exchange believes it is appropriate to amend Section 703.18 to permit their listing on the NYSE.

Section 703.18 currently provides that the issuer of a listed CVR must be an entity that has assets in excess of $100 million and meets the "size and earnings" requirements of Section 102 of the Manual. The Exchange intends to retain the $100 million assets requirement, but it proposes to amend the reference to the "size and earnings requirements" of Section 102 by specifying instead that the issuer must meet the requirements of Sections 102.01B and 102.01C. The requirements of Section 102.01B include the size requirements applicable to all newly-listed operating companies (the applicable requirement would be the $100 million in market value of publicly-held shares requirement applied to companies transferring from another national securities Exchange), as well as a $4.00 stock price requirement. Section 102.01C sets forth two financial standards, the Earnings Test and the Global Market Capitalization Test, one of which must be met by an issuer seeking to list on the Exchange. The Global Market Capitalization Test, which was adopted subsequent to the approval of Section 703.18, requires that an issuer have $200 million in global market capitalization at the time of listing, but includes no earnings criteria. Because most issuers qualify for listing pursuant to the Global Market Capitalization Test, and such test has no earnings criteria, the Exchange believes it is appropriate to remove the reference to "size and earning requirements" in the current Section 703.18 and replace that language with a reference to Sections 102.01B and 102.01C instead. The Exchange believes that an issuer that meets the requirements of the Global Market Capitalization Test is likely to be a substantial company capable of meeting its financial obligations under the terms of a listed CVR.

Currently, Section 703.18 provides that a CVR may be delisted when the related equity security to which the cash payment at maturity is tied is delisted. To reflect the fact that the delisting provision will now relate to both Cash-Based CVRs and Event-Based CVRs and to reflect the fact that Event-Based CVRs are not tied to the performance of a specific security, the Exchange proposes to modify this provision to provide that a CVR will be delisted when the issuer's common stock ceases to be listed on a national securities exchange. Under the Exchange's proposed amendment, if the common stock of a CVR issuer ceases to be listed on a national securities exchange, the CVR will be automatically delisted and the Exchange will not have discretion to continue listing the CVR.

Finally, the Exchange proposes to update a reference in Section 703.18 to New York Stock Exchange, Inc., by replacing it with a reference to New York Stock Exchange LLC, which is the correct current legal entity name for the Exchange. In addition, the Exchange proposes to add an introductory sentence prior to the form of information circular contained in Section 703.18. The Exchange intends to issue an information circular as described in Section 703.18 immediately prior to the listing of any CVR, including any Event-Based CVR.

The Exchange will monitor activity in CVRs, including Event-Based CVRs, to identify and deter any potential improper trading activity in such securities and will adopt enhanced surveillance procedures to enable it to monitor CVRs alongside the common equity securities of the issuer or its affiliates, as applicable. 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.

2. Statutory Basis

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 proposal to permit the listing of Event-Based CVRs under Section 703.18 is designed to protect investors and the public interest. Listed companies have been issuing transferable Event-Based CVRs as acquisition consideration for a number of years.[7] The purpose of the proposed amendment is to provide a transparent regulated market for the trading of those securities. The Exchange notes that, with the exception of the payment triggering event, Event-Based CVRs are identical in structure to Price-Based CVRs. The listing of Price-Based CVRs has been permitted under Section 703.18 for many years.

The Exchange will distribute an information circular as described in Section 703.18 prior to the commencement of trading of any CVR apprising member firms of the special characteristics and risks of the CVR, as well as the Exchange's know-your-customer, suitability, and other rules applicable thereto. The distribution of this information circular will help address

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

6 15 U.S.C. 78f(b)(5).

7 See, for example, CVRs listed by Sanofi (cash payment tied to achieving sales targets of certain drugs) and Wright Medical Group N.V. (cash payment tied to FDA approval of a certain drug and achieving revenue milestones), both listed on the Nasdaq Stock Market.

concerns, among others, that the complexity of a CVR could lead to investor confusion and create certain risks. In addition, the Exchange will monitor activity in CVRs, including Event-Based CVRs, to identify and deter any potential improper trading activity in such securities and will adopt enhanced surveillance procedures to enable it to monitor CVRs together with the common equity securities of the issuer or its affiliates, as applicable. The Exchange believes these measures will reduce the risks of manipulative or other improper activity in connection with CVRs.

The proposed modification to the issuer qualification requirements of Section 703.18 is designed to protect investors and the public interest, as it conforms those requirements to changes in the initial listing requirements for common stocks of operating companies pursuant to amendments to Section 102 that have been implemented since the adoption of Section 703.18. The issuer requirements under Section 703.18 are those applied to the initial listing of common stocks of operating companies and, as such, the Exchange believes that they are sufficiently rigorous to be used in connection with the listing of CVRs. The Exchange further believes that issuers that meek [sic] the Exchange's issuer qualification requirements are likely to be substantial companies capable of meeting their financial obligations under the terms of a listed CVR. The Exchange also notes that it will continue to require issuers of listed CVRs to have at least $100 million in total assets at the time of original listing.

The proposal to amend the continued listing requirements of Section 703.18 to provide that a listed CVR will be delisted if its issuer ceases to be listed on a national securities exchange is designed to protect investors and the public interest, as it ensures that issuers whose CVR s are listed on the Exchange will meet the qualitative and quantitative standards for listing on a national securities exchange on a continuous basis.

The updated reference to the Exchange's legal entity name and additional introductory language are simply factual corrections and have no substantive impact.

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. The proposed amendment to Section 703.18 will increase competition by providing an additional listing venue for Event-Based CVRs. The amendment to the issuer qualification requirements in Section 703.18 simply conforms those requirements to modifications to the initial listing requirements for common stocks of operating companies and does not impose any burden on competition. The amendment to the continued listing requirements in 703.18 is being proposed to ensure the ongoing suitability for listing of the issuers of CVRs and does not impose 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:

(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-2019-14 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-2019-14. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-14, 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
Deputy Secretary

[8] 17 CFR 200.30-3(a)(12).