

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88717; File No. SR-NYSE-2020-36)

April 21, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide a Longer Period for Listed Companies to Regain Compliance with Its \$50 Million Market Capitalization/Stockholders' Equity and \$1.00 Price Continued Listing Requirements by Tolling the Compliance Periods Through and Including June 30, 2020

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on April 20, 2020, 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 and II 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 provide a longer period for listed companies to regain compliance with its \$50 million market capitalization and \$1.00 price continued listing requirements by tolling compliance periods through and including June 30, 2020. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The U.S. and global equities markets have experienced unprecedented market-wide declines as a result of the ongoing spread of COVID-19. As a consequence, since the commencement of the current market turbulence in the last week of February 2020, the Exchange has experienced an unusually high number (as compared to historical levels) of listed companies:

- that have been designated, or may soon be designated, as below compliance with continued listing standards, as set forth in Section 802.01B and become subject to a maximum 18-month cure period (pursuant to the procedures set forth in Sections 802.02 and 802.03 as applicable), as a consequence of having both stockholders' equity of less than \$50 million and an average global market capitalization over a consecutive 30 trading-day period of less than \$50 million (the "\$50 Million Standard"); or
- that have stock prices that have fallen below the Exchange's \$1.00 price requirement for capital and common stock set forth in Section 802.01C of the Manual (i.e., the average closing price of their stock has fallen below \$1.00 over a consecutive 30 trading day period) (the "Dollar Price Standard") and that are

consequently subject to a six months compliance plan period (as set forth in Section 802.01C) or that may imminently fall below compliance with that listing standard.⁴

In response to the conditions described above, the Exchange proposes to provide a longer period of time to regain compliance with the \$50 Million Standard and Dollar Price Standard by tolling the applicable compliance periods through June 30, 2020 (the “Tolling Period”). The Exchange proposes to continue to identify companies that fall below the \$50 million Standard and the Dollar Price Standard during the Tolling Period and inform such companies of their noncompliance. Any companies notified of noncompliance during the Tolling Period would have to meet the press release requirements under Section 802.02 or 802.03 (for companies identified as below the \$50 Million Standard) or Section 802.01C (for companies identified as below the Dollar Price Standard) and, where applicable, will be subject to the Form 8-K disclosure requirement under SEC rules.⁵ In addition, the Exchange would continue to attach a .BC indicator to such companies’ tickers⁶ and would continue to identify them as below compliance on the Exchange’s website during the Tolling Period. However, any time period for which a company is deemed to be below compliance during the Tolling Period, would not be counted toward the maximum applicable compliance plan period of 18 months with respect to

⁴ For illustrative purposes, the Exchange notes that the number of listed companies with a trading price below \$1.00 as of the date of this filing is approximately 10 times as many as was the case on the last trading day of 2019.

⁵ The Exchange encourages companies to issue the required press release as promptly as possible.

⁶ While the Exchange attaches a .BC indicator to the tickers of listed companies that are below compliance when it provides data to the Consolidated Tape, the Exchange cannot require commercial data vendors to carry this information on their services and understands that some of them do not include the .BC indicator in their data packages.

the \$50 million Standard or six months with respect to the Dollar Price Standard. Instead, all applicable compliance plan periods for companies newly identified as below compliance with these listing standards during the Tolling Period would be calculated as beginning on July 1, 2020.

The Exchange notes that at the time of the financial crisis it waived the Dollar Price Standard in its entirety, including ceasing to identify companies as newly below compliance with that standard during the period of the relief and freezing for that period the compliance periods of companies that had previously been identified as noncompliant with the Dollar Price Standard.⁷ In its conversations with listed companies, the Exchange has learned that many companies are experiencing severe disruptions to their businesses during the current crisis, including employees who have contracted the COVID-19 virus and the need to adopt emergency measures to protect their employees from infection. The Exchange believes that it is undesirable to impose on companies in the midst of this crisis the additional burden of attempting to return to compliance with these market price-based standards while the crisis is ongoing, which may be unrealistic for many companies in the immediate term whereas their prospects may be better once the current extraordinary conditions have passed.

The Exchange's proposed application of the Tolling Period in relation to the \$50 Million Standard and the Dollar Price Standard is in addition to the ongoing temporary suspension of the \$15 million market capitalization standard of Section 802.01B through and including June 30,

⁷ See Securities Exchange Act Release No. 59510 (March 4, 2009), 74 FR 10636 (March 11, 2009) (SR-NYSE-2009-21) (suspending the dollar price requirement through June 30, 2009). See also Securities Exchange Act Release No. 60273 (July 9, 2009), 74 FR 34606 (July 16, 2009) (SR-NYSE-2009-64) (extending the suspension of the dollar price requirement through July 31, 2009).

2020, with respect to which the Exchange submitted an earlier rule filing.⁸ The extreme volatility and the precipitous decline in trading prices of many securities experienced in the U.S. and global equities markets could lead to a high number of securities being deemed to be below compliance with continued listing standards during a short period of highly volatile markets. The proposed Tolling Period would provide temporary relief to these companies and their shareholders in response to these extraordinary market conditions.

Under the proposed Tolling Period, the compliance period of any company that is in a compliance period for non-compliance with the \$50 Million Standard at the time of commencement of the Tolling Period would have this compliance period tolled and recommence on July 1, 2020. Consistent with Sections 802.02 and 802.03, a company that is operating under a compliance plan for non-compliance with the \$50 Million Standard as of the date of this filing would be deemed to be back in compliance with continued listing requirements if at any time, including during the Tolling Period, the company is able to demonstrate (1) compliance with the \$50 Million Standard, or (2) the ability to qualify under an original listing standard, in each case for a period of two consecutive quarters.

Notwithstanding this proposal, companies will be required to submit compliance plans within the applicable time frames set forth in Sections 802.02 and 802.03 of the Manual, and the Exchange will review companies' progress under their plans on a quarterly basis during the Tolling Period as provided by those rules. In addition, Sections 802.02 and 802.03 provide the Exchange with the authority to commence delisting proceedings against a company prior to the end of the maximum compliance plan period if the company fails to meet the material aspects of

⁸ See Securities Exchange Act Release No. 88441 (March 20, 2020), 85 FR 17136 (March 26, 2020) (SR-NYSE-2020-21).

the compliance plan accepted by the Exchange or any of the quarterly milestones in that plan. This proposal does not in any way limit the Exchange's authority to take such action where it deems appropriate.

Under the proposed application of the Tolling Period in relation to the Dollar Price Standard, the compliance period of any company that is in a compliance period at the time of commencement of the Tolling Period would have this compliance period tolled and recommence on July 1, 2020. Consistent with the normal application of the rule, companies that are in a compliance period at the time of commencement of the Tolling Period would be deemed to have regained compliance during the Tolling Period if, at the expiration of their respective six-month cure periods established prior to the commencement of the Tolling Period, they have a \$1.00 closing share price on the last trading day of the period and a \$1.00 average share price based on the preceding 30 trading days (e.g., a company that is currently in a compliance period with a specified end date of May 30, 2020, will be deemed to have returned to compliance if it meets the applicable requirements on May 30, notwithstanding the fact that the Tolling Period will be in effect at that time, and if it does not return to compliance as of May 30, it will have its compliance period tolled through June 30. In addition, consistent with the normal application of the rule, any company that is in a compliance period at the time of commencement of the Tolling Period can return to compliance during the Tolling Period earlier than the specified end date for its compliance period if such company has both a \$1.00 closing share price on the last trading day of any calendar month during the previously-established compliance period and a \$1.00 average share price based on the 30 trading days preceding the end of such month.

The proposed adoption of the Tolling Period does not provide any additional compliance period to any company with respect to which the Exchange has commenced delisting proceedings prior to the date of this filing, including those that have exercised their appeal right.

The Exchange would be able to implement the proposed rule change immediately upon effectiveness of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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.

As a result of uncertainty related to the ongoing spread of the COVID-19 virus, the prices of securities listed on U.S. exchanges have been experiencing rapid and significant changes. The proposed rule change is designed to reduce uncertainty by extending time periods to regain compliance with continued listing standards during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market. Notwithstanding the tolling of the compliance periods, important investor protections will remain, including that investors will be able to identify companies that are non-compliant with the requirements on the Exchange's website, including for newly-

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

identified companies whose compliance periods have been tolled during the Tolling Period, and the Exchange will append a .BC indicator to such companies' tickers when providing data to the Consolidated Tape. In addition, companies that become newly non-compliant with the applicable continued listing standards will have to notify investors by issuing a press release as required under NYSE rules and, where required by SEC rules, a Form 8-K. With exception of companies that are currently in delisting proceedings, all companies listed on the Exchange that are currently below compliance with the \$50 Million Standard or the Dollar Price Standard as of the time of filing of this proposal, or that fall below those standards after the submission of this proposal, would be eligible to take advantage of the proposed tolling period.

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 purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to reduce uncertainty for certain companies and their shareholders by providing additional time for companies to regain compliance. In addition, the proposed rule change is not designed to have any effect on intermarket competition but instead seeks to address concerns the Exchange has observed surrounding the application of the \$50 Million Price Requirement and the Dollar Price Requirement to companies listed on the Exchange. Other exchanges can craft relief based on their own rules and observations.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange stated that the proposed rule change is designed to respond to the unprecedented uncertainty and resulting market declines related to the global spread of the COVID-19 virus. Specifically, the Exchange stated that the proposed rule change is designed to reduce uncertainty for certain companies and their shareholders by providing additional time for companies that are below compliance with the \$50 Million Standard and the Dollar Price Standard to regain compliance with these standards during the current highly unusual market conditions. The Exchange also stated that investors will still be able to identify companies that are non-compliant

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

with the requirements on the Exchange's website and the Exchange will continue to append a .BC indicator to those companies' tickers when providing data to the Consolidated Tape. In addition, the Exchange noted that it will continue to notify companies about new instances of non-compliance and any newly non-compliant companies will have to notify investors by issuing a press release and, where required by SEC rules, a Form 8-K.

The Commission notes that while the proposal provides additional time for companies to comply with the \$50 Million Standard and the Dollar Price Standard, new companies that are deficient with these standards during the Tolling Period will still continue to be notified by the Exchange of the deficiency as they currently would be under normal circumstances with no Tolling Period, and would continue to be required to notify investors by issuing a press release as required under NYSE rules and, where required by SEC rules, a Form 8-K.¹⁵ In addition, the Exchange will continue to attach a .BC indicator to the tickers of companies that fall below the \$50 Million Standard and the Dollar Price Standard during the Tolling Period, including companies newly identified during the Tolling Period, and will continue to identify such companies as below compliance on the Exchange's website during the Tolling Period, so that shareholders and the public will have access to such information as they normally would without the Tolling Period. Pursuant to the requirements of Sections 802.02 and 802.03 of the Manual, companies below compliance will continue to be required to submit compliance plans within the applicable time frames set forth therein and the Exchange will continue to review companies' progress under their plans on a quarterly basis during the Tolling Period. The Commission notes that the additional time to comply with the standards is meant to address the current unusual

¹⁵ The Commission notes that the Exchange encourages companies to issue the required press release as promptly as possible. See supra note 5.

market conditions while continuing to ensure that shareholders and the public have relevant and accurate information concerning a company's deficiency with the \$50 Million Standard and the Dollar Price Standard. The Commission also notes that the proposal is a temporary measure designed to respond to current, unusual market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁷ of the Act to determine whether the proposed rule change should be approved or 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

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-36 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-2020-36. 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-2020-36 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).