

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97048; File No. SR-NYSE-2023-15)

March 6, 2023

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 313

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2023, 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 and II 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The Exchange proposes to amend Rule 313 to eliminate text reflecting outdated requirements. 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 received on the proposed rule change. The text of those statements may be examined at the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Rule 313 to delete the current text of Supplementary Material .22 and designate Rule 313.22 as "Reserved."

Rule 313 sets forth certain corporate, limited liability company, or partnership documents that each member organization must submit to the Exchange to enter into and continue in NYSE membership. The Rule also sets forth certain restrictions on capital withdrawals and distributions applicable to member corporations and partnerships.

Rule 313.22 currently provides that the certificate of incorporation of a member corporation must contain provisions authorizing the corporation to redeem or convert outstanding shares of voting stock to a fixed income security when such shares are owned by any person required to be approved by the Board of Directors of the Exchange as a member or approved person and such person fails or ceases to be so approved, as may be necessary to reduce such party's ownership of voting stock in the member corporation below the level that would enable such party to exercise controlling influence over the management or policies of such member corporation.

Rule 313.22 also provides that, if the certificate of incorporation of a member corporation subject to Rule 325 provides that a stockholder may compel the redemption of his stock, such certificate must provide that, unless such stockholder has prior written approval of the Exchange, the redemption may only be effected on a date not less than six months after receipt by the member corporation of a written request for redemption, given no sooner than six months after

the date of the original issuance of such shares (or any predecessor shares). Rule 313.22 also requires a member corporation to promptly notify the Exchange of the receipt of any request for redemption of any stock or if any redemption is not made because prohibited under the provisions of Rule 15c3-1.<sup>3</sup>

Finally, Rule 313.22 provides that each stock certificate of a member corporation must state, on its face, the restrictions set forth in Rule 15c3-1(e) relating to the redemption of stock or a full summary thereof.

*Proposed Rule Change*

The Exchange proposes to delete the text of Rule 313.22 and designate Rule 313.22 as “Reserved.”

The Exchange believes that Rule 313.22, which was adopted in 1970 and last amended in 1976 to incorporate references to then newly adopted Rule 15c3-1,<sup>4</sup> requiring a member corporation’s certificate of incorporation to contain specific provisions relating to the redemption and conversion of stock and requiring a member corporation’s stock certificate to include the restrictions set forth in Rule 15c3-1(e) relating to the redemption of stock no longer serves a regulatory, business or investor protection purpose and in fact poses an unnecessary obstacle for prospective applicants for Exchange membership. Specifically, the Exchange believes that the provisions of Rule 313.22 are duplicative of the requirements of Rule 15c3-1, as well as other Exchange and Financial Industry Regulatory Authority, Inc. (“FINRA”) rules adopted subsequent to the implementation of Rule 313.22. The Exchange notes that the proposed change

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<sup>3</sup> See 17 CFR 240.15c3-1.

<sup>4</sup> See SR-NYSE-75-11. Prior to the change, proprietors had been able to withdraw all of their capital even where such action would result in a capital ratio or minimum dollar capital in violation of the net capital rule.

relates only to Rule 313.22's requirements concerning the contents of a member organization's certificate of incorporation or stock certificate and would not otherwise impact a member organization's continuing obligation to comply with the net capital requirements of Rule 15c3-1, including pursuant to NYSE Rule 4110 and, for the large number of member organizations that are also members of FINRA, FINRA Rule 4110. Both NYSE Rule 4110 and FINRA Rule 4110 require, among other things, that a member organization must suspend business operations during any period in which it is not in compliance with applicable net capital requirements set forth in Rule 15c3-1 and that no equity capital of a member organization may be withdrawn for a period of one year from the date such equity capital is contributed.<sup>5</sup>

The Exchange believes that the elimination of the requirements set forth in current Rule 313.22 would simplify the membership application process without impacting the Exchange's ability to ensure that member organizations are qualified for Exchange membership and would be held to the requirements of Exchange rules. Prospective member organizations would continue to be subject to the membership application process, which calls for applicants to submit materials including organizational documents, financial statements, and records relating to the organization's designated supervisors and principals.<sup>6</sup> Approved member organizations are bound to abide by Exchange rules, and the Exchange would continue to have the authority to

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<sup>5</sup> See NYSE Rule 4110 (Capital Compliance); FINRA Rule 4110 (Capital Compliance), available at: <https://www.finra.org/rules-guidance/rulebooks/finra-rules/4110>. The Exchange adopted Rule 4110 in 2010 to harmonize its rules with FINRA Rule 4110. See Securities Exchange Act Release No. 61557 (February 22, 2010), 75 FR 9472 (March 2, 2010) (SR-NYSE-2010-10) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange LLC Changing Certain NYSE Rules and Rule Interpretations To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.).

<sup>6</sup> The NYSE membership application is available at: [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Application\\_for\\_Membership.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Application_for_Membership.pdf).

enforce member organizations' obligations under Exchange rules (including compliance with relevant net capital requirements pursuant to Rule 15c3-1, as applicable).<sup>7</sup>

The Exchange also believes that the requirements of Rule 313.22, to the extent they necessitate modifications to a member corporation's certificate of incorporation or stock certificate, may be burdensome to prospective member organizations given the potential difficulty of amending such documents and could deter organizations from seeking Exchange membership. The Exchange thus believes that eliminating the requirements of Rule 313.22 could make the membership application process more accessible to prospective member organizations, thereby encouraging additional corporations to consider and apply for Exchange membership.

Finally, Rule 313.22 currently includes a provision referring to member corporations subject to Rule 325, which rule was designated as "Reserved" in 2010.<sup>8</sup> Accordingly, the Exchange believes that the portion of Rule 313.22 setting forth requirements relating to corporations subject to Rule 325 likewise no longer has application.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular,

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<sup>7</sup> The Exchange notes that the proposed change would likewise have no impact on FINRA's authority to enforce its rules with respect to member organizations that are also FINRA members.

<sup>8</sup> See Securities Exchange Act Release No. 61557 (February 22, 2010), 75 FR 9472 (March 2, 2010) (SR-NYSE-2010-10) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange LLC Changing Certain NYSE Rules and Rule Interpretations To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that eliminating the requirements of Rule 313.22 with respect to member corporations would remove impediments to and perfect the mechanism of a free and open market and a national market system by simplifying the application process for prospective member organizations and in turn encouraging organizations to apply for Exchange membership. The Exchange believes that the requirements of Rule 313.22 do not currently serve a regulatory or business purpose and do not further investor protection interests, particularly since the deletion of the requirements in Rule 313.22 would not impact the Exchange's ability to make informed decisions with respect to applicants for Exchange membership or to require member organizations to abide by Exchange rules, including rules relating to their net capital obligations pursuant to Rule 15c3-1. The Exchange further believes that the issues that may have been contemplated when Rule 313.22 was adopted (such as ensuring that a member organization's controlling persons are qualified and that member organizations comply with the relevant provisions of Rule 15c3-1) are adequately addressed by both the application review process and the processes in place for the oversight of member organizations' compliance with Exchange rules.

The Exchange also believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and is designed to protect investors and the public interest because it would improve the efficiency of the membership application process and the clarity of the Exchange's rules by removing the outdated and unnecessarily burdensome requirements that a member corporation's certificate of

incorporation and stock certificate contain specific language relating to the redemption. The Exchange also notes that the proposed change to no longer require specific language referencing Rule 15c3-1 in the certificate of incorporation and stock certificate would not impact a member organization's obligation to comply with the relevant net capital requirements of Rule 15c3-1, including pursuant to NYSE Rule 4110 and FINRA Rule 4110, as applicable. The Exchange further believes that broadening the prospective Exchange membership pool by eliminating requirements that no longer serve regulatory or business purposes and do not offer a necessary investor protection would benefit investors and the public interest by facilitating increased market participation and depth at the Exchange.

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 Exchange believes that the proposed rule change could promote competition by removing an outdated requirement applicable to prospective member organizations that are corporations. The Exchange believes that deleting the requirements set forth in Rule 313.22 (particularly those calling for modification of a corporation's certificate of incorporation and/or stock certificate) could result in less burdensome and more efficient standards for prospective member organizations to meet, thereby encouraging additional corporations to consider pursuing Exchange membership. Expanding the prospective Exchange membership pool by eliminating a requirement that no longer appears to serve a business, regulatory, or other purpose could promote competition by increasing market participation and depth at the Exchange.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>14</sup>

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)<sup>15</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).



#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2023-15 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-2023-15. This file number should be included on the subject line if email 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-2023-15 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>16</sup>

Sherry R. Haywood

Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).