

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100720; File No. SR-NYSE-2024-23)

August 13, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend Section 703.12(II) of the NYSE Listed Company Manual to Expand the Circumstances Under Which Rights May Be Listed on the NYSE

I. Introduction

On April 29, 2024, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Section 703.12(II) of the NYSE Listed Company Manual (“Manual”) to expand the circumstances under which rights may be listed on the NYSE by allowing issuers to (i) issue rights to more than existing shareholders for a class of securities that is listed or to be listed on the Exchange, and (ii) list and trade rights on the Exchange prior to listing the security into which such rights will be exercisable. The proposed rule change was published for comment in the Federal Register on May 15, 2024.<sup>3</sup> On June 26, 2024, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission has received no

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

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

<sup>3</sup> See Securities Exchange Act Release No. 100102 (May 10, 2024), 89 FR 42543 (Notice of Filing of Proposed Rule Change to Amend Section 703.12(II) of the NYSE Listed Company Manual to Expand the Circumstances Under Which Rights May Be Listed on the NYSE) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 100437, 89 FR 54894 (July 2, 2024). The Commission designated August 13, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

comment letters on the proposed rule change. The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

## II. Description of the Proposed Rule Change

The Exchange proposes to amend Section 703.12(II) of the Manual to expand the circumstances under which rights may be listed on the NYSE. First, the Exchange proposes allowing issuers to issue rights to more than existing shareholders for a class of securities that is listed or to be listed on the Exchange. Currently, under Section 703.12(II) of the Manual, the term “rights” refers to the privilege offered to holders of record of issued equity securities to subscribe for additional securities of the same class. Consistent with the current rights listing requirements, the Exchange states that rights traded on the Exchange have been limited to granting existing shareholders the right to subscribe for additional shares of a listed class of equity securities that such shareholders already hold.<sup>7</sup> The Exchange proposes to amend Section 703.12(II) to provide that the term “rights” will refer to the privilege offered recipients of such rights to subscribe for shares of a class of securities (whether or not equity securities) of such issuer that is listed or to be listed on the Exchange, regardless of whether the recipients of the rights are existing shareholders of record of such issuer.

Second, the Exchange proposes allowing issuers to list and trade rights on the Exchange prior to listing the security into which such rights will be exercisable. Currently, under Section 703.12(II) of the Manual, in order to be listed on the Exchange rights must be issued to purchase or receive a security that is already listed on the Exchange or that will be listed on the Exchange

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<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Notice, supra note 3, at 42544.

concurrent with the rights. The Exchange proposes to expand the circumstances in which a right may be listed to permit the listing of a right where the security into which such right is exercisable will be listed on the Exchange<sup>8</sup> upon exercise of the rights and such exercise is pursuant to a registration statement filed under the Securities Act of 1933 (a “Securities Act Registration Statement”) that has been declared effective by the Commission prior to or simultaneous with the listing of such rights (“Prospective Listing Rights”). Prospective Listing Rights would only be eligible for listing if, at the time of initial listing, there are (i) at least 1,000,000 Prospective Listing Rights issued, and (ii) at least 400 public holders of round lots.<sup>9</sup>

The Exchange will promptly initiate suspension and delisting procedures with respect to such Prospective Listing Rights if it is determined that (i) the security for which the Prospective Listing Rights are exercisable will not be listed on the Exchange; (ii) the market value of publicly-held shares of a series of Prospective Listing Rights at any time is less than \$4,000,000; or (iii) if the Prospective Listing Rights remain outstanding at the time of the initial listing on the Exchange of the securities into which such Prospective Listing Rights are exercisable, the Prospective Listing Rights fail to meet all of the initial listing requirements applicable to the listing of rights other than Prospective Listing Rights. If the Exchange commences delisting procedures with respect to Prospective Listing Rights, the issuer of the Prospective Listing Rights will not be eligible to avail itself of the provisions of Sections 802.02 and 802.03 of the

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<sup>8</sup> The security underlying a Prospective Listing Right must satisfy the applicable initial listing standards set forth in Section 102.00 or Section 103.00 of the Manual. See id.

<sup>9</sup> For purposes of Section 703.12(II), “Public holders” excludes holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10 percent or more of the total outstanding shares.

Manual and any such Prospective Listing Rights will be subject to delisting procedures as set forth in Section 804.00 of the Manual.<sup>10</sup>

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSE-2024-23 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>11</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>12</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be 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 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

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<sup>10</sup> Section 804.00 of the Manual provides procedures for a listed company to appeal an Exchange staff determination to delist a security.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>12</sup> Id.

market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>13</sup>

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.<sup>14</sup>

As described above, the Exchange proposes to substantially expand the types of rights that may be listed on the Exchange to include Prospective Listing Rights, which provide the right to subscribe for any class of securities that is intended to be listed on the Exchange in the future, and can be offered to anyone. Today, the Exchange's listing rules limit the rights that may be listed on the Exchange to those that provide the right to subscribe for a class of equity securities that is already listed on the Exchange, or will be listed concurrently with the rights, and are offered only to holders of record of the same class of equity securities. The Commission has concerns about whether the proposal is sufficiently designed to prevent fraudulent and

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<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, 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. See, e.g., Securities Exchange Act Release Nos. 91947 (May 19, 2021), 86 FR 28169, 28172 n.47 (May 25, 2021) (SR-NASDAQ-2020-057) ("Nasdaq 2021 Order"); 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR-NYSE-2019-67) ("NYSE 2020 Order"); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR-NYSE-2017-30) ("NYSE 2018 Order"); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR-NYSE-2017-31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR-NYSE-2017-11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See, e.g., Nasdaq 2021 Order, 86 FR at 28172 n.47; NYSE 2020 Order, 85 FR at 85811 n.55; NYSE 2018 Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR-NASDAQ-2019-059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR-NASDAQ-2020-001).

manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest, as required by Section 6(b)(5) of the Exchange Act.

The Exchange justifies its proposal by stating that the proposed rule change would provide issuers “greater flexibility in structuring a rights offering as a capital raising tool.”<sup>15</sup> The Exchange also believes that the requirement that there be an effective Securities Act Registration Statement in relation to the exercise of the Prospective Listing Rights prior to or simultaneous with their listing would provide significant investor protections, by ensuring that investors trading or exercising the Prospective Listing Rights have access to the appropriate level of disclosure to enable them to make informed investment decisions.<sup>16</sup> The Exchange also points out that it will promptly initiate suspension and delisting procedures with respect to the Prospective Listing Rights if it is determined that the underlying securities will not be listed on the Exchange (e.g., because the issuer has determined to terminate the Prospective Listing Rights because the transaction they were intended to fund has been terminated, or the underlying securities are no longer eligible for listing), or if they fail to meet its quantitative continued listing standards, such as the requirement that the market value of publicly-held shares of a series of Prospective Listing Rights be at least \$4,000,000.<sup>17</sup>

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<sup>15</sup> See Notice, supra note 3, at 42544.

<sup>16</sup> See id. Prospective Listing Rights would also be subject to Section 202.05 and 202.06 of the Manual, which would require immediate disclosure of all material news. The Exchange believes that the disclosure requirements would act as a significant safeguard against illegal manipulation. See id. at 42545. In addition, the Exchange believes that such Securities Act Registration Statements, including disclosure about the anticipated business and financial position of the issuer as it will exist upon exercise of the Prospective Listing Rights, would provide investors in the Prospective Listing Rights with the ability to make judgments about the anticipated value of the underlying securities by making comparisons to the market values of comparable listed companies. See id. The Exchange further believes that its proposed initial and continued listing standards would ensure trading liquidity. See id.

<sup>17</sup> See id. at 42544.

The Exchange's proposal would appear to permit the listing of Prospective Listing Rights that are issued both for value and without consideration. The proposal also provides no time limit on how long Prospective Listing Rights may trade on the Exchange before the underlying security is listed.

The Exchange does not clearly explain how market participants would effectively value Prospective Listing Rights, particularly those that are issued without consideration, given that the underlying securities will not be publicly traded, and the uncertain relationship between the exercise price and the value of the underlying securities. The Exchange does not address, among other things, the types of market information that could create a positive value for the Prospective Listing Rights, the reliability and availability of such information, or whether such information could support fair and efficient trading of an Exchange-listed security for an indefinite period of time.

The Exchange also does not explain how it would effectively address the risk the price of Prospective Listing Rights could be manipulated, or how its proposal otherwise would be designed to prevent fraudulent or manipulative acts or practices. For example, the price of Prospective Listing Rights would appear to be particularly susceptible to rumors about the target company, or the likelihood the transaction the Prospective Listing Rights is intended to fund will be consummated. The Exchange makes the general statement that it believes its existing surveillance procedures, including those relating to Special Purpose Acquisition Companies ("SPACs"), are adequate to detect manipulative trading practices with respect to Prospective Listing Rights. Because Prospective Listing Rights may trade at a very low price, however, they may permit a bad actor to efficiently manipulate those securities with little upfront cost. The

Exchange does not clearly address how its proposal is designed to prevent the risk that Prospective Listing Rights may be particularly susceptible to manipulation.

Further, the Exchange does not clearly explain the rationale for the various numerical standards and criteria set forth in its proposal, or how they together are designed to be consistent with the Exchange Act and the rules and regulations thereunder. For example, the Exchange proposes that an issuer's Prospective Listing Rights may initially be listed on the Exchange if there are at least 1,000,000 issued, but also proposes a continued listing standard that requires prompt initiation of suspension and delisting procedures if the market value of publicly-held shares of a series of Prospective Listing Rights at any time is less than \$4,000,000. This would imply a minimum price in these circumstances of more than \$4 per Prospective Listing Right. The Exchange acknowledges that it is not proposing any initial market value or security price requirements for the Prospective Listing Rights, but believes that the \$4,000,000 market value continued listing standard will ensure that Prospective Listing Rights will not commence trading on the Exchange unless the market believes they have more than nominal trading value. Because Prospective Listing Rights may decline in price after listing, however, they may soon become subject to delisting. The Exchange has not clearly addressed how such a scenario would be consistent with the protection of investors and the public interest and other relevant provisions of the Exchange Act, or how the other numerical standards and criteria in its proposal have been designed to work together to avoid similar outcomes.

In addition, to the extent Prospective Listing Rights are issued in exchange for consideration, the Exchange has not explained how the offering proceeds will be protected pending consummation of the underlying transaction and exercise. Similarly, the proposal does not address how the proceeds received by the issuer upon exercise will be protected pending the



consummation of the underlying transaction. Nor has the Exchange explained what will happen to such proceeds in the event the underlying transaction is not consummated or it is determined that the underlying security otherwise will not be listed on the Exchange. The Exchange’s rules relating to the listing of SPACs, for example, contain many detailed investor protections relating to how and where such funds will be held, and the circumstances under which they will be used to fund the business combination or returned to shareholders.<sup>18</sup> The Exchange has not proposed that any of these important investor protections apply to Prospective Listing Rights, or explained how their absence is consistent with the protection of investors or the public interest.

With respect to the Exchange’s proposed change to allow issuers to issue rights to more than existing shareholders for a class of securities that is listed or to be listed on the Exchange, the Exchange justifies its proposal by stating that it does not believe that there is an investor protection concern that justifies limiting rights to existing shareholders.<sup>19</sup> Further, the Exchange states that Section 312.03(c) of the Manual generally provides existing shareholders of listed common stock the ability to block any rights offering that was materially dilutive of their economic or voting interest.<sup>20</sup> However, that rule only covers issuances of common stock or securities convertible into common stock, and would not appear to address other types of securities that may underlie Prospective Listing Rights. The Exchange has not addressed these and related potential investor protection concerns.

In addition, the Exchange states that the exercise of the rights would be “pursuant to a registration statement filed under the Securities Act of 1933 (a ‘Securities Act Registration Statement’) that has been declared effective . . . prior to or simultaneous with the listing of such

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<sup>18</sup> See Section 102.06 of the Manual.

<sup>19</sup> See Notice, supra note 3, at 42544.

<sup>20</sup> See id. at 42545.

rights” and that such registration statement would be updated “to reflect any material changes in the information required to be included therein that arise between the time of effectiveness of the Securities Act Registration Statement and the exercise of the Prospective Listing Rights, thereby ensuring that investors trading the Prospective Listing Rights on the Exchange will have access to current information about the issuer on a continuous basis.”<sup>21</sup> However, it does not appear that the proposal contains a requirement that an issuer file a new registration statement or a post-effective amendment, either of which must include full disclosure regarding the target’s business, as well as any required target financial statements, at the critical time when a target has been identified and rights holders begin making decisions on exercising their Prospective Listing Rights for the underlying securities, thereby raising investor protection concerns.<sup>22</sup> The mere updating of a registration statement that registered the initial issuance of the Prospective Listing Rights (the “Initial Registration Statement”) via prospectus supplement or incorporation by reference would also raise investor protection concerns. Importantly, without a new registration statement or a post-effective amendment to the Initial Registration Statement, investors will not necessarily have the protections of the private liability provisions of the Securities Act of 1933 (“Securities Act”) when exercising their rights for the underlying securities. A new registration statement or post-effective amendment containing all of the required information about the target would provide investors with the full liability protections of the Securities Act. For example, the filing of a new registration statement or post-effective amendment would provide a new effective

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<sup>21</sup> See id. at 42544.

<sup>22</sup> For example, a Securities Act Registration Statement may have been declared effective before any information on the underlying security is available, and it does not appear that the Exchange proposal would require such Securities Act Registration Statement to be amended once such information becomes available or, alternatively, a new Securities Act Registration Statement to be filed.

date covering all of the disclosures relating to the target included therein. It would also permit staff review of the new registration statement or post-effective amendment and would effectively restart the statute of limitations under Section 11 of the Securities Act, giving investors the full advantage of the statutory window in which to, if necessary, bring suit. Without an explicit requirement to file a new registration statement or post-effective amendment containing full disclosure regarding the target's business, as well as any required target financial statements, investors would not necessarily have the disclosure required to make an informed investment decision or the full panoply of remedies available under the Securities Act for material misstatements and omissions. Given these important investor protection issues, there are questions raised about the proposal's consistency with the investor protection and public interest requirements under Section 6(b)(5) of the Exchange Act.

Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirements, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and not be designed to permit unfair discrimination.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."<sup>23</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an

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<sup>23</sup> 17 CFR 201.700(b)(3).

affirmative Commission finding,<sup>24</sup> and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>25</sup>

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>26</sup> to determine whether the proposal should be approved or disapproved.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>27</sup> or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>28</sup> any request for an opportunity to make an oral presentation.<sup>29</sup>

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<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 17 CFR 240.19b-4.

<sup>29</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://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-2024-23 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-2024-23. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-23 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>30</sup> 17 CFR 200.30-3(a)(57).