

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101295; File No. SR-NYSE-2024-44)

October 9, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Adopt a Provision that the Exchange Will Not Review a Compliance Plan Submitted by a Listed Company that is Below Compliance with a Continued Listing Standard if the Company Owes Any Unpaid Fees to the Exchange and Will Instead Immediately Commence Suspension and Delisting Procedures if Such Fees are Not Paid in Full

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 September 27, 2024, 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 adopt a provision that the Exchange will not review a compliance plan submitted by a listed company that is below compliance with a continued listing standard if the company owes any unpaid fees to the Exchange and will instead immediately commence suspension and delisting procedures if such fees are not paid in full by the plan submission deadline or at the time of any required periodic review of such plan. The text of the proposed rule change is set forth in Exhibit 5 attached hereto. The proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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

Section 802.02 ("Evaluation and Follow-Up Procedures for Domestic Companies") of the NYSE Listed Company Manual ("Manual") provides that when the Exchange identifies a domestic listed company as being below certain continued listing criteria set forth in Section 802.01 of the Manual (and not able to otherwise qualify under an original listing standard), the Exchange will notify the company of such noncompliance by letter and provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Similarly, Section 802.03 ("Continued Listing -- Evaluation and Follow-up Procedures for Non-U.S. Companies") sets forth provisions under which non-U.S. listed companies can submit a Plan to cure noncompliance with continued listing standards.

If a company submits a Plan pursuant to Sections 802.02 or 802.03, it must identify specific quarterly or semi-annual milestones against which the Exchange will evaluate the company's progress. The company has 45 days (in the case of a domestic company subject to Section 802.02) (the “Domestic Plan Deadline”) or 90 days (in the case of a non-U.S. company subject to Section 802.03) (the “Non-U.S. Plan Deadline” and, together with the Domestic Plan Deadline, the “Plan Deadline”) from the receipt of a letter from the Exchange identifying an event of noncompliance to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence in accordance with Section 804.00 of the Manual. The Plan must demonstrate how the company will return to compliance with the applicable continued listing standard by the end of the Plan period. All companies submitting a Plan must include quarterly financial projections, details related to any strategic initiatives the company plans to complete, and market performance support. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with the relevant standard(s) within 18 months. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

If the Exchange accepts the Plan, the Exchange will review the company for compliance with the Plan on either a quarterly basis (in the case of a domestic company) or a semi-annual basis (in the case of a non-U.S. company). If the company fails to meet the material aspects of the Plan or any of the quarterly or semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension

and delisting procedures in accordance with Section 804.00, it may do so regardless of the company's continued listing status at that time. The Exchange will deem the Plan period over prior to the end of the 18 months if a company is able to demonstrate returning to compliance with the applicable continued listing standards, or achieves the ability to qualify under an original listing standard, for a period of two consecutive quarters. In any event, a company that does not meet continued listing standards at the end of the 18-month period, will be subject to the prompt initiation of suspension and delisting procedures in accordance with Section 804.00.

The Exchange staff has to undertake a significant amount of work in reviewing and analyzing each Plan submitted by a noncompliant company. In addition, the review of quarterly or semi-annual updates with respect to each Plan requires significant additional work by Exchange staff. Given the significant work required to review and analyze Plans, as well as to undertake the required quarterly or semi-annual review with respect to a Plan, the Exchange believes it is especially important to ensure that companies that wish to have a Plan accepted or continued by the Exchange have paid all outstanding annual and listing fees (as set forth in the Manual in Section 902.00 et seq⁴) prior to the acceptance of a Plan or any required periodic review of such Plan. As such, the Exchange proposes to amend Sections 802.02 and 802.03 of the Manual to provide that a listed company seeking acceptance of a Plan must pay all outstanding annual and listing fees to the Exchange by the Plan Deadline and that failure to do so will result in the immediate commencement of suspension and delisting proceedings in accordance with Section 804.00. Similarly, the Exchange proposes to amend Sections 802.02 and 802.03 to provide that a Plan will be truncated and immediate suspension and delisting

⁴ The listing fees and annual fees for all categories of listed securities are set forth in Section 902.00 et seq.

procedures will commence if the listed company has not paid all outstanding annual and listing fees to the Exchange at the time of any quarterly or semi-annual review of such Plan.

Section 802.01D of the Manual provides that the Exchange may in its sole discretion subject a listed company to the procedures outlined in Sections 802.02 and 802.03 (or commence immediate suspension and delisting procedures) if the company has “violated” any of its agreements with the Exchange or in the event of a “breach by the company of the terms of its listing agreement.” The Exchange notes that the NYSE listing agreement includes an agreement by the listing applicant to “pay when due all fees associated with its listing of securities on the Exchange, in accordance with the Exchange’s rules.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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 Exchange believes the proposed rule change furthers the protection of investors in that it will help the Exchange to ensure that it has sufficient resources to fund its regulatory

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

activities relating to the review and approval and the ongoing monitoring of Plans submitted by companies that are below continued listing standards.

The Exchange does not believe that the proposed requirement is unfairly discriminatory as it would only require listed companies to pay fees that were already due and payable and ensure payment of those fees in connection with a process that is resource-intensive and costly for the Exchange. In addition, the Exchange notes that Section 802.03 provides non-U.S. companies with 90 days from the receipt of notice of non-compliance to submit a Plan to the Exchange, while Section 802.02 provides domestic companies with only a 45-day period to do so. In addition, Section 802.03 subjects non-U.S. companies to a semi-annual review during any ongoing Plan process, while Section 802.02 subjects domestic companies to a quarterly review process. In light of this existing distinction in the rules, the Exchange believes it is not discriminatory to give non-compliant non-U.S. companies a period to pay overdue fees in connection with any initial Plan acceptance or continuing Plan review that is consistent with the provisions applicable to non-U.S. companies set forth in Section 802.03 rather than the provisions applicable to domestic companies set forth in Section 802.02.

The Exchange believes that the proposal is consistent with Section 6(b)(7) of the Act,⁷ in that it provides a fair procedure for the prohibition or limitation by the Exchange of the continued listing of listed companies. Specifically, the Exchange believes it is fair to require listed companies to pay all outstanding listing and annual fees before the Exchange approves a Plan or required periodic review of a Plan, as listed companies are already required by Exchange rules (as set forth in Section 902.00 et seq) and their listing agreements to pay these fees when due and the Exchange has the authority under Section 802.01D to delist companies for violations

⁷ 15 U.S.C. 78f(b)(7).

of their agreements with the Exchange, including their listing agreements. In addition, the Exchange notes that the Plan acceptance and periodic review process requires significant incremental work on the part of Exchange staff.

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 notes that the proposed amendments would simply require listed companies to pay fees to the Exchange that were already due and payable under applicable Exchange rules and the issuer's listing agreement. Specifically, the Exchange believes it is fair to require listed companies to pay all outstanding listing and annual fees before the Exchange approves a Plan or required periodic review of a Plan, as listed companies are already required by Exchange rules (as set forth in Section 902.00 et seq) and their listing agreements to pay these fees when due and the Exchange has the authority under Section 802.01D to delist companies for violations of their agreements with the Exchange, including their listing agreements. In addition, the Exchange notes that the Plan acceptance and periodic review process requires significant incremental work on the part of Exchange staff.

As the proposal would not result in any change in the cost of a listing on the Exchange, the Exchange does not believe that it imposes any additional 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 within such longer period 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-44 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-2024-44. 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-2024-44 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood,

Assistant Secretary.

⁸ 17 CFR 200.30-3(a)(12).