

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99992; File No. SR-NYSE-2024-21)

April 19, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Amend Section 802.01D of the NYSE Listed Company Manual Concerning the Suspension and Delisting of a Listed Company that has Changed its Primary Business Focus

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 4, 2024, 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. On April 17, 2024, the Exchange filed Amendment No. 1, which supersedes the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, 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 802.01D of the NYSE Listed Company Manual (“Manual”) to provide the Exchange with discretion to commence suspension and delisting proceedings with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing, or which was immaterial to its operations at the time of its original listing. The text of the proposed

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

rule change is set forth in Exhibit 5. This Amendment No. 1 to SR-NYSE-2024-21 replaces SR-NYSE-2024-21 as originally filed and supersedes such filing in its entirety.⁴

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 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

This Amendment No. 1 to SR-NYSE-2024-21 replaces SR-NYSE-2024-21 as originally filed and supersedes such filing in its entirety.⁵ Amendment No.1 amends the original filing to: (i) insert a new sentence in the proposed new paragraph in Section 802.01D stating that the Exchange would focus its analysis of a company’s suitability for continued listing after a change in operations on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing; (ii) amend the lead-in language to Section 802.01D and the description in the Purpose section of the filing to include a parenthetical that specifies that, instead of applying the procedures outlined in Sections 802.02

⁴ See note 5 infra.

⁵ See SR-NYSE-2024-21 (April 4, 2024).

and 802.03, the Exchange will instead commence immediate suspension and delisting procedures if the individual paragraph of Section 802.01D so specifies; (iii) insert a sentence in the Purpose section noting that the Exchange’s analysis of a company’s change in business operations will focus on the qualitative aspects of the company’s suitability for listing and will not entail an application of the quantitative standards for initial listing; (iv) amend the proposed new paragraph of Section 802.01D under the heading “Change in Primary Business Focus” to clarify that the proposed paragraph will apply only where the company has changed its primary business focus to a new area of business that is “substantially different” from the business it was engaged in at the time of its original listing or, as provided in the original filing, which was immaterial to its operations at the time of its original listing; (v) clarify that any suspension and delisting resulting from a change in operations will be undertaken in accordance with the procedures set out in Section 804.00 of the Manual; and (vi) make conforming changes to the Statutory Basis section.

It has been the Exchange’s experience that listed companies occasionally change the focus of their operations from the business they were engaged in at the time of initial listing to a business line that is completely unrelated or that was not material at the time of its original listing. The Exchange is concerned that, in such circumstances, investors who acquired the company’s stock prior to this change in operations (including, in many cases, in connection with the company’s initial public offering) may have made their investment decision based on the company’s disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, a wholesale change in business operations may give rise to a concern about the suitability for listing of the company had it been engaged in that line of business at the time of its application for listing. The

Exchange notes that, in some circumstances, there has been significant downward price movement subsequent to such a change in business focus, which resulted in significant investor losses and an inability to meet exchange continued listing standards.⁶

In light of the foregoing, the Exchange proposes to amend Section 802.01D of the Manual (“Other Criteria”) to include a new paragraph (“Change in Primary Business Focus”) providing that the Exchange may in its sole discretion subject a listed company to immediate suspension and delisting in accordance with the procedures set forth in Section 804.00 of the Manual if that listed company has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. If the Exchange becomes aware of such a change in the company’s primary business focus, the Exchange’s Staff would conduct a thorough assessment of the company’s suitability for continued listing in light of such change. The Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company’s suitability for listing and will not entail an application of the quantitative standards for initial listing. For example, the Exchange would, where appropriate, take into consideration other changes that may have occurred in connection with the change in the company’s primary business focus, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the company. The Exchange acknowledges

⁶ For example, Bit Brother, a company listed on Nasdaq, initially focused on selling tea products but ultimately changed its business line to crypto. After three reverse splits, one of which was quite large (1000:1), the company was still unable to regain sustained compliance with listing standards. The stock was delisted from Nasdaq in February 2024. See <https://www.wsj.com/finance/stocks/as-trading-frenzies-grip-penny-stocks-criticism-of-nasdaq-grows-8bd4118b> (Feb 23, 2024).

that seeking to suspend and delist a company's stock under this revised rule would be an extraordinary action. The Exchange therefore anticipates seldom relying on this new discretionary authority, and only after thorough analysis of all relevant facts and circumstances.

The lead-in to Section 802.01D provides that if any of the factors set forth in 802.01D apply to a listed company, the Exchange may in its sole discretion subject the company to the procedures outlined in Paras. 802.02 and 802.03, which provide noncompliant companies with an opportunity to cure their deficiencies. The Exchange proposes to add a parenthetical to this lead-in language to specify that, instead of applying the procedures outlined in Paras. 802.02 and 802.03, the Exchange will instead commence immediate suspension and delisting procedures if the individual paragraph of Section 802.01D so specifies). This proposed parenthetical provision in the lead-in to Section 802.01D will make the lead-in consistent with the Exchange's proposal to include a provision in the proposed new paragraph of that rule providing that any listed company that is deemed to be unsuitable for continued listing because of a change of business operations will be subject to immediate suspension and delisting procedures.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 it is consistent with the protection of investors to amend Section 802.01D to provide the Exchange with the discretion to immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The Exchange notes that investors who acquired the company's stock prior to this change in operations (including, in many cases, in connection with the company's initial public offering) may have made their investment decision based on the company's disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, the Exchange is concerned that a listed company may change its business operations to a line of business that would have given rise to a concern about the suitability for listing of the company had it been engaged in that line of business at the time of its application for listing. The Exchange notes that taking delisting action in such cases would be discretionary and that the Exchange would undertake such action only after a careful analysis of the company's suitability for continued listing, taking into account all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the company. In making these determinations, the Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the

company's suitability for listing and will not entail an application of the quantitative standards for initial listing.

The proposed inclusion of new parenthetical language in the lead-in to Section 802.01D makes that lead-in consistent with the proposed new paragraph with respect to a company's change in business, as it provides that the Exchange can immediately suspend and delist a company under Section 802.01D where the applicable paragraph of the rule so provides, as is the case with the proposed new provision with respect to changes in business operations.

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 there are several listing venues and that any company that the Exchange deemed unsuitable for continued listing under the proposed rule could apply for listing on one or more other exchanges.

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, as modified by Amendment No. 1, or

- (B) institute proceedings to determine whether the proposed rule change as modified by Amendment No. 1, 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, as modified by Amendment No. 1, 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-2024-21 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-2024-21. 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-2024-21 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.⁹

Sherry R. Haywood,

Assistant Secretary.

⁹ 17 CFR 200.30-3(a)(12).