

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102169; File No. SR-NYSE-2024-44)

January 13, 2025

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a 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

I. Introduction

On September 27, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Sections 802.02 and 802.03 of the NYSE Listed Company Manual (“Manual”) to provide that the Exchange (1) will not review a compliance plan submitted by a domestic or non-U.S. listed company that is determined to be below compliance with a continued listing standard unless the company has paid in full all outstanding listing or annual fees due to the Exchange and will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual if such fees are not paid in full by the plan submission deadline; or (2) with respect to any unpaid fees that have become due and payable since the commencement of its plan period, will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual if such fees are not paid in full at the time of any required periodic review of such plan. The proposed rule change was

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

published for comment in the Federal Register on October 16, 2024.³

On November 25, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

Currently, Sections 802.02 and 802.03 of the Manual provide that when the Exchange identifies a domestic company subject to Section 802.02 of the Manual (“listed domestic company”) or a non-U.S. company subject to Section 802.03 of the Manual (“listed non-U.S. company”) as being below the continued listing criteria set forth in Section 802.01 of the Manual (and the company is not able to otherwise qualify under an original listing standard), the Exchange will notify the company of such noncompliance by letter and give the company an opportunity to provide the Exchange with a plan (“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.⁷ If a company submits a plan pursuant to Sections 802.02 or 802.03 of the Manual, it must identify specific quarterly milestones, in the case of listed domestic companies, or semi-annual milestones, in the case of listed non-U.S. companies,

³ See Securities Exchange Act Release No. 101295 (Oct. 9, 2024), 89 FR 83527 (“Notice”). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nyse-2024-44/srnyse202444.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 101738, 89 FR 95283 (December 2, 2024). The Commission designated January 14, 2025, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Sections 802.02 and 802.03 of the Manual. See also Notice at 83527.

against which the Exchange will evaluate the company's progress.⁸ A company has 45 days, in the case of listed domestic companies, or 90 days, in the case of listed non-U.S. companies, from receipt of the letter from the Exchange identifying an event of noncompliance to submit its plan to the Exchange for review (the "plan submission deadline").⁹ Otherwise, suspension and delisting procedures will commence in accordance with Section 804.00 of the Manual.¹⁰

With respect to a plan submitted pursuant to Sections 802.02 or 802.03 of the Manual, Exchange staff will evaluate the plan, including any supporting documentation, and determine whether the company has made a reasonable demonstration in the plan of the company's ability to come into conformity with the relevant continued listing standards within 18 months.¹¹ If the Exchange accepts the plan, the Exchange will review the company for compliance with the plan either quarterly, in the case of a listed domestic company, or semi-annually, in the case of a listed non-U.S. company.¹² If the Exchange determines that the company has failed to meet the material aspects of the plan or any quarterly or semi-annual milestones, as applicable, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures.¹³ In any event, a company that does not meet the continued listing standards at the end of the 18 months will be subject to the

⁸ See Sections 802.02 and 802.03 of the Manual.

⁹ See Sections 802.02 and 802.03 of the Manual. See also Notice at 83527.

¹⁰ See Sections 802.02 and 802.03 of the Manual; Notice at 83527.

¹¹ See Sections 802.02 and 802.03 of the Manual. See also Notice at 83528. The Exchange will make such determination within 45 days of receipt of the plan and will promptly notify the company of its determination in writing. See Sections 802.02 and 802.03 of the Manual.

¹² See Sections 802.02 and 802.03 of the Manual. See also Notice at 83528. 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 achieving the ability to qualify under an original listing standard, for a period of two consecutive quarters. See Sections 802.02 and 802.03 of the Manual.

¹³ See Sections 802.02 and 802.03 of the Manual. If the Exchange determines to proceed with suspension and delisting procedures in accordance with Section 804.00 of the Manual, it may do so regardless of the company's continued listing status at that time. See id.

prompt initiation of suspension and delisting procedures in accordance with Section 804.00 of the Manual.¹⁴

The Exchange proposes to amend Sections 802.02 and 802.03 of the Manual to provide that the Exchange will not review a plan submitted by a listed domestic company or listed non-U.S. company (each referred to herein as a “listed company” and, together, “listed companies”) that the Exchange has identified as being below the continued listing standards set forth in Section 802.01 of the Manual unless the company has previously paid in full any listing or annual fees due to the Exchange.¹⁵ If the listed company is below continued listing standards and has not paid in full all outstanding listing or annual fees by the plan submission deadline, under the proposal, the Exchange will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual.¹⁶ In addition, the Exchange proposes to amend Sections 802.02 and 802.03 of the Manual to provide that in connection with the Exchange’s quarterly or semi-annual review of a plan, as applicable, the Exchange will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual with respect to any listed domestic company or listed non-U.S. company that has not paid any listing or annual fees that have become due and payable since the commencement of its plan period.¹⁷

The Exchange states that the process of reviewing and analyzing plans and reviewing the periodic updates with respect to plans is resource-intensive and costly for the Exchange and that, given the significant amount of work required, the Exchange believes it is important to ensure

¹⁴ See id.

¹⁵ See proposed amendments to Sections 802.02 and 802.03 of the Manual; Notice at 83528.

¹⁶ See proposed amendments to Sections 802.02 and 802.03 of the Manual; Notice at 83528.

¹⁷ See proposed amendments to Sections 802.02 and 802.03 of the Manual; Notice at 83528.

that companies that wish to have a plan accepted or continued by the Exchange have paid all outstanding annual and listing fees prior to acceptance of a plan or at the time of any required review of such plan.¹⁸ In addition, the Exchange states that listed companies are already required by Exchange rules to pay fees, as set forth in Section 902.00 et seq. of the Manual¹⁹ and their listing agreements,²⁰ and the proposal “would simply require listed companies to pay fees to the Exchange that were already due and payable.”²¹ In addition, the Exchange states that it currently has the authority under Section 802.01D of the Manual to delist companies for violations of their agreements with the Exchange, including their listing agreements.²² The Exchange states that the proposal will help the Exchange to ensure that it has sufficient resources to fund its regulatory activities relating to the review and approval and the ongoing monitoring of plans submitted by companies that are below continued listing standards.²³

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSE-2024-44 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act²⁴ to determine whether the proposed rule change should be approved or

¹⁸ See Notice at 83528.

¹⁹ The listing fees and annual fees for all categories of listed securities are set forth in Section 902.00 et seq. of the Manual. See Notice at 83528 n.4.

²⁰ The Exchange states 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.” Notice at 83528.

²¹ Id.

²² See id. Section 802.01D of the Manual provides that the Exchange may in its sole discretion subject a company to the procedures outlined in Sections 802.02 and 802.03 of the Manual if the company, its transfer agent, or registrar, violates any of its, or their, listing or other agreements with the Exchange. In addition, Section 802.01D of the Manual provides that the Exchange is not limited by the criteria set forth in the rule and “[o]ther factors which may lead to a company’s delisting include ... [a] breach by the company of the terms of its listing agreement.”

²³ See Notice at 83528.

²⁴ 15 U.S.C. 78s(b)(2)(B).

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.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,²⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Exchange Act and, in particular, with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to "promote just and equitable principles of trade, 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 not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers;"²⁶ and with Section 6(b)(7) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange "provide a fair procedure for", among other things, "the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange."²⁷

The Commission has previously stated that the development and enforcement of meaningful exchange listing standards²⁸ is of critical importance to financial markets and the investing public. 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 to promote fair and orderly markets. Meaningful listing standards also are

²⁵ Id.

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78f(b)(7).

²⁸ The Commission notes that this reference to "listing standards" is referring to both initial and continued listing standards.

important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²⁹

As discussed above, Sections 802.02 and 802.03 of the Manual set forth specific procedures for listed domestic companies and listed non-U.S. companies that are identified as being below the Exchange's continued listing criteria, including procedures for companies to submit a plan to regain compliance.³⁰ The Commission has stated that such rules enhance investor protection by ensuring that companies that fail to satisfy the continued listing criteria are identified, reviewed, and then subjected to specified delisting procedures.³¹

The Exchange now proposes to amend Sections 802.02 and 802.03 of the Manual to provide that the Exchange will not review a compliance plan submitted by a listed domestic company or listed non-U.S. company that is determined to be below compliance with the continued listing standards set forth in Section 802.01 of the Manual unless the company has paid in full all outstanding listing or annual fees due to the Exchange, and the Exchange will

²⁹ See, e.g., Securities Exchange Act Release Nos. 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR-NASDAQ-2020-001) (Order Approving a Proposed Rule Change To Modify the Delisting Process for Securities With a Bid Price at or Below \$0.10 and for Securities That Have Had One or More Reverse Stock Splits With a Cumulative Ratio of 250 Shares or More to One Over the Prior Two-Year Period); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR-NASDAQ-2019-089) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 5815 To Preclude Stay During Hearing Panel Review of Staff Delisting Determinations in Certain Circumstances). See also Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR-NYSE-2017-31) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts) (stating that “[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market” and that “[o]nce a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue ... so that fair and orderly markets can be maintained”).

³⁰ See Sections 802.02 and 802.03 of the Manual.

³¹ See, e.g., Securities Exchange Act Release No. 41502 (Jun. 9, 1999), 64 FR 32588, 32594 (Jun. 17, 1999) (SR-NYSE-99-13).

immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual with respect to a listed company if such fees are not paid in full by the plan submission deadline. In addition, the Exchange proposes to amend Sections 802.02 and 802.03 of the Manual to provide that in connection with the Exchange's quarterly or semi-annual review of a plan, as applicable, the Exchange will immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual with respect to any listed company that has not paid any listing or annual fees that have become due and payable since the commencement of its plan period.

The Commission has concerns about whether the Exchange's proposal is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between issuers, as required by Section 6(b)(5) of the Exchange Act. As discussed above, the Exchange states in support of its proposal that the process of reviewing and analyzing plans and reviewing the periodic updates with respect to plans is resource-intensive and costly for the Exchange and that, given the significant amount of work required, the Exchange believes it is 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 prior to acceptance of a plan or at the time of any required review of such plan.³² However, the Exchange does not give further detail regarding the resources and costs involved in reviewing plans under Sections 802.02 and 802.03 of the Manual submitted by listed companies that fall below the continued listing criteria in Section 802.01 of the Manual or for the quarterly or semi-annual reviews of compliance with these plans, including with respect to quarterly or semi-annual reviews that occur later in the process.

³² See Notice at 83528.

Further, the Exchange's Manual outlines other processes that apply to issuers that are not in compliance with certain Exchange rules pursuant to which an issuer that falls out of compliance is not eligible to follow the procedures in Sections 802.02 and 802.03 of the Manual and instead may follow alternative procedures specific to the rule violation. For example, Section 802.01E of the Manual applies to a listed company that incurs a late filing delinquency by failing to timely file certain reports with the Commission, and provides, among other things, that the Exchange will notify a company of its filing delinquency and require the company to contact the Exchange to discuss the status of the report subject to the filing delinquency within a certain time period and that, during the six-month period from the date of the filing delinquency, the Exchange will monitor the company and the status of the delinquent report and any subsequent reports until the filing delinquency is cured.³³ If the company fails to cure the filing delinquency within the initial six-month cure period, the Exchange may, in its sole discretion, grant an additional six-month period to a company to cure the filing delinquency depending on the company's specific circumstances.³⁴ Section 802.01E of the Manual, however, does not explicitly require a company that incurs a late filing delinquency to have paid all outstanding annual and listing fees prior to the Exchange's undertaking to monitor such company or when considering whether to grant the company an initial or additional six-month period to cure the delinquency, nor does it require the Exchange to immediately commence suspension and delisting procedures with respect to such company if such fees are not paid in full when the Exchange is considering granting the initial or additional cure period or while the Exchange is

³³ See Section 802.01E of the Manual.

³⁴ See *id.* Section 802.01E of the Manual also allows the Exchange to truncate any delinquency cure period or not grant any cure period on the basis of an analysis of all relevant factors including specified ones set forth in the rule. See *id.*

monitoring such company.³⁵ The Exchange has not addressed how the Exchange’s review of compliance plans under Sections 802.02 and 802.03 of the Manual is more resource intensive and costly for the Exchange than other processes set forth in the Manual applicable to issuers who are violating Exchange rules and are working to come back into compliance, such as, for example, the process set forth in Section 802.01E of the Manual for delinquent filers.³⁶ As a result, the proposal raises questions as to whether it is consistent with the provisions of Section 6(b)(5) of the Exchange Act that, among other things, require that the rules of the Exchange not be designed to permit unfair discrimination between issuers.

Similarly, the Exchange has not addressed or adequately justified why it is proposing to suspend and delist only companies subject to Sections 802.02 and 802.03 of the Manual that have not paid outstanding fees by the plan submission deadline, rather than proposing a provision to suspend and delist any listed company that is delinquent in paying its outstanding fees. The Exchange has not adequately justified why it is treating issuers subject to Sections 802.02 and 802.03 of the Manual different from other listed issuers.

Furthermore, as discussed above, the Exchange states that it has the authority and discretion under its current rules to immediately suspend and delist a company that has not paid

³⁵ See id.

³⁶ As another example, Section 802.01F of the Manual applies to a listed issuer that is not compliant with the provisions of Section 303A.14 of the Manual (Erroneously Awarded Compensation) (referred to as a “clawback requirement delinquency”) and provides a process for an issuer subject to a clawback requirement delinquency to come back into compliance with Exchange rules that is similar to the process set forth in Section 802.01E of the Manual described above. Similarly, Section 802.01F of the Manual does not explicitly require a company that incurs a clawback requirement delinquency to have paid all outstanding annual and listing fees prior to the Exchange’s undertaking to monitor such company or when considering whether to grant the company an initial or additional six-month period to cure the delinquency, nor does it require the Exchange to immediately commence suspension and delisting procedures with respect to such company if such fees are not paid in full when the Exchange is considering granting the initial or additional cure period or while the Exchange is monitoring such company. See Section 802.01F of the Manual.

required fees when due.³⁷ The Exchange has not sufficiently explained why its proposal to immediately suspend and delist listed companies subject to Sections 802.02 and 802.03 of the Manual that have failed to pay all outstanding fees by the plan submission deadline is designed to protect investors and the public interest and not designed to permit unfair discrimination between issuers, consistent with Section 6(b)(5) of the Exchange Act, given that the Exchange already has the discretion to suspend and delist such a company under its current rules.

In addition, the Commission has concerns about whether the Exchange's proposal provides for a fair procedure for the prohibition or limitation by the Exchange of any person with respect to access to services offered, as required by Section 6(b)(7) of the Exchange Act. The Exchange's proposal would require the Exchange to immediately suspend and delist a company that already has a plan in place with the Exchange pursuant to Section 802.02 or 802.03 of the Manual, if, at its quarterly or semi-annual review, as applicable, the company has not paid any listing or annual fees that have become due and payable since the commencement of its plan period. It is unclear from the proposal whether, in such a situation, the listed company would have prior notice regarding the suspension and delisting and/or a period to pay any unpaid fees prior to such suspension and delisting. For example, it is unclear if immediate suspension and delisting would occur even if the fees became due only one day prior to a quarterly or semi-annual review.

As a result, the Commission believes there are questions as to whether the proposal is consistent with Sections 6(b)(5) and 6(b)(7) of the Exchange Act.³⁸ For this reason, it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act³⁹ to

³⁷ See supra notes 20-22 and accompanying text.

³⁸ 15 U.S.C. 78f(b)(5) and (7).

³⁹ 15 U.S.C. 78s(b)(2)(B).

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 Sections 6(b)(5) and 6(b)(7) of the Exchange Act⁴⁰ or any other provision of the Exchange 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 Exchange Act,⁴¹ any request for an opportunity to make an oral presentation.⁴²

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:

⁴⁰ 15 U.S.C. 78f(b)(5) and (b)(7).

⁴¹ 17 CFR 240.19b-4.

⁴² Section 19(b)(2) of the Exchange 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).

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*]. 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.⁴³

Sherry R. Haywood,

Assistant Secretary.

⁴³ 17 CFR 200.30-3(a)(57).