

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80398; File No. SR-NYSE-2017-15)

April 7, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Remove Section 204.25 (Treasury Stock Changes) from the NYSE Listed Company Manual

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 March 27, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 remove Section 204.25 (“Treasury Stock Changes”) from the NYSE Listed Company Manual (the “Manual”). 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove Section 204.25 ("Treasury Stock Changes") from the Manual.

Section 204.25 provides that if issued and listed stock of a listed company is reacquired or disposed of, directly or indirectly, for the account of the company, the Exchange is required to receive notice of such transaction within ten days after the close of the fiscal quarter in which it occurs. This notice need state only the total number of shares reacquired (shares of a company's own stock acquired by the company and held for its own account are typically referred to as "treasury shares") or disposed of during the quarter and the balance held by the company at the end of the quarter. If, during such quarter, there were both reacquisitions and dispositions, the total amount reacquired and the total amount disposed of should be stated. The only purposes for which the Exchange generally uses treasury share information is for determining compliance with its shareholder approval requirements in relation to share issuances and for calculating annual listing fees.

The Exchange believes it is unnecessary to require listed companies to submit this information on a quarterly basis as it has not regularly relied on this information for any regulatory purpose for many years.⁴ In the event that the Exchange needs information about a

⁴ A listed company's treasury stock position was significant at one time, as listed companies were able to reissue treasury shares without giving rise to any shareholder approval requirements under Section 312.03 of the Manual. Since the adoption of Section 312.04(j), issuances of treasury shares are treated like any other issuance of

listed company's treasury stock position, it will either request that information from the company in question or it will obtain it by reviewing the company's financial statements included in its Form 10-K or Form 10-Q. In addition, the Exchange notes that the primary purpose for which it uses treasury share data is for purposes of analyzing transactions under Sections 312.03 ("Shareholder Approval") and 303A.08 ("Shareholder Approval of Equity Compensation Plans").⁵ To that end, the Exchange notes that Part 1 of Section 703.01 of the Manual provides that, in the event a company is issuing shares from treasury in a transaction or series of related transactions, it must notify the Exchange in writing in advance of the issuance, indicating whether shareholder approval is required pursuant to Sections 303A.08 or 312.03 and, if required, the date such shareholder approval was obtained.⁶ In addition, the Exchange notes that the form of subsequent listing application companies must complete whenever they apply to list additional shares requires the company to provide information about the total number of shares outstanding at the time of entering into a definitive agreement in connection with the applicable transaction, as well as the number of shares held in treasury at that time. This requirement enables the Exchange to calculate the percentage of the company's then outstanding shares represented by the shares issued in the transaction and thereby ensure that companies are complying with the shareholder approval requirements of Section 312.03.

Section 902.03 of the Manual provides that companies must pay annual listing fees on all shares outstanding, including treasury shares. The Exchange bills companies for annual fees

common stock for purposes of Section 312.03. See Securities Exchange Act Release No. 54999 (December 21, 2006); 72 FR 170 (January 3, 2007) (SR-NYSE-2006-30).

⁵ Exchange rules do not impose any substantive restrictions on listed companies' ability to repurchase their own stock.

⁶ If the issuance involves both shares issued from treasury and newly issued, the company may include this notification in the subsequent listing application that the company files to list the newly issued shares.

each year based on the number of shares outstanding as of the previous December 31 (including treasury shares) as reported to the Exchange for that purpose by the company's transfer agent. As such, the information currently provided to the Exchange by companies pursuant to Section 204.25 with respect to changes in companies' treasury share positions is not needed in connection with the Exchange's billing procedures.

The Exchange notes that it does not rely on treasury share reporting under Section 204.25 in monitoring compliance with its continued listing standards with respect to market capitalization and publicly-held shares. Rather, the Exchange relies on the number of shares outstanding as reported on a quarterly basis [sic] on the cover of a company's annual report filed with the SEC and (where applicable) Form 10-Qs. We also check these requirements against information provided by the market data vendors.

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)⁸ of the Act, 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 is consistent with these goals in that it is designed to protect the public interest, because the information gathered pursuant to the current treasury stock reporting requirement can be

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

obtained directly from the applicable listed company or from its public filings on an as-needed basis and is also provided in connection with every subsequent listing application.

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 proposed rule change is designed to remove a treasury share reporting requirement imposed on all listed companies because the Exchange can obtain that information from public disclosures or from the applicable listed company or from its public filings on an as-needed basis. As such, the proposed amendment will not impose any 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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 and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing.

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)¹¹ of the Act to determine whether the proposed rule change should be approved or 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-15 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-2017-15. This file number should be included on the subject line if e-mail 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

¹¹ 15 U.S.C. 78s(b)(2)(B).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2017-15 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.¹²

Eduardo A. Aleman
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).