

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80867; File No. SR-NYSE-2017-08)

June 6, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend its Listing Standards for Closed-end Funds

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 May 24, 2017, 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, 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 amend its listing standards for closed-end funds. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its listing standards for closed-end funds to conform them to those of NYSE MKT LLC ("NYSE MKT").

Paragraph A of Section 102.04 of the NYSE Listed Company Manual (the "Manual") currently permits the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a "Fund") that meets the distribution requirements of Section 102.01A of the Manual and the stock price and market value of publicly-held shares requirement of Section 102.01B of the Manual, provided that the required market value of publicly held shares for Funds is \$60 million regardless of whether it is an IPO or an existing Fund. Notwithstanding the foregoing requirement for market value of publicly held shares of \$60 million, the Exchange will generally authorize the listing of all the Funds in a group of Funds listed concurrently with a common investment adviser or investment advisers who are "affiliated persons", as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended, if:

- Total group market value of publicly held shares equals in the aggregate at least \$200 million;
- The group market value of publicly held shares averages at least \$45 million per Fund; and
- No one Fund in the group has market value of publicly held shares of less than \$30 million.

Section 802.01B of the Manual provides that the Exchange will promptly initiate suspension and delisting procedures with respect to a Fund if the average market capitalization of

the entity over 30 consecutive trading days is below \$15 million. In addition, the Exchange will promptly initiate suspension and delisting procedures with respect to a Fund if it ceases to maintain its closed-end status. The Exchange will notify the Fund if the average market capitalization falls below \$25 million and will advise the Fund of the delisting standard. Funds are not eligible to follow the cure procedures outlined in Sections 802.02 and 802.03 of the Manual.

The Exchange proposes to amend Paragraph A of Section 102.04 and Section 802.01B to eliminate their current requirements with respect to the initial and continued listing of Funds and replace them with listing requirements substantively identical to those under the current NYSE MKT listing standards for Funds. The proposed amended standards would include requirements with respect to a Fund's net asset value. The net asset value (or "NAV") of a Fund is the value of all Fund assets (less liabilities) divided by the number of shares outstanding. All Funds disclose NAV on at least a quarterly basis and many disclose it more frequently. While Funds typically trade at either a premium or discount to NAV, their share price generally maintains a close relationship to NAV. As a consequence, the market price of a Fund is less reliant on the price discovery mechanism of a liquid trading market than is the case with operating companies. As Exchange listing requirements with respect to publicly held shares are generally intended to facilitate a liquid trading market for operating companies, the role of a Fund's NAV in determining the market price of its securities makes publicly held shares requirements less important for Funds than for operating companies. Therefore, the Exchange believes that NAV is an appropriate additional or alternative measure of the suitability of Funds for initial and continued listing.

As proposed, a Fund would be qualified for listing on a stand-alone basis if it has a market value of publicly held shares or net assets of at least \$20 million. As further proposed, Funds would be eligible to be listed concurrently with a common investment adviser or investment advisers who are "affiliated persons", as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended, if:

- The group has a total market value of publicly held shares or net assets of at least \$75 million;
- The Funds in the group have an average market value of publicly held shares or net assets of at least \$15 million; and
- Each Fund in the group has a market value of publicly held shares or net assets of at least \$10 million.

These proposed initial listing standards are based on Section 101(g) of the NYSE MKT Company Guide without any substantive differences.

The continued listing standards for Funds set forth in Section 802.01B currently provide that a Fund is subject to delisting if its average market capitalization is less than \$15 million over 30 trading days. The Exchange proposes to replace this requirement with a new continued listing standard providing that a Fund would be subject to delisting if the total market value of publicly held shares and net assets are each less than \$5 million for more than 60 consecutive calendar days. These proposed continued listing standards are based on Section 1003(b)(v) of the NYSE MKT Company Guide without any substantive differences.⁴ The Exchange further proposes to

⁴ The Exchange would monitor compliance on an ongoing basis with the proposed amended total market value of publicly held shares requirement. The Exchange would communicate with any Fund whose total market value of publicly held shares fell below \$5 million over 60 calendar days to enable the Fund to provide evidence that its net assets had exceeded \$5 million over the required period. The Exchange would promptly initiate

lower the threshold for when the Exchange would advise the Fund of the delisting standard. Because the market capitalization component of the delisting standard would be \$5 million of total market value of publicly held shares over 60 calendar days instead of an average of \$15 million of market capitalization over 30 trading days as is currently the case, the Exchange proposes to similarly reduce the notification threshold from an average market capitalization of \$25 million to a total market value of publicly held shares over a 60 calendar day period of \$10 million.

The Exchange also proposes to conform its distribution standards for continued listing of Funds to those of NYSE MKT. Common stocks of Funds are currently subject to the distribution requirements for the common stocks of operating companies set forth in Section 802.01A of the Manual.⁵ The Exchange proposes to replace those requirements for Funds with distribution standards substantively identical to those applied to Funds by NYSE MKT under Section 1003(b)(i) of the NYSE MKT Company Guide. Under the proposed amendment, the Exchange would normally give consideration to the prompt initiation of suspension and delisting procedures with respect to the common stock of a Fund if:

(A) the number of shares publicly held⁶ (is less than 200,000; or

suspension and delisting procedures with respect to any such Fund that was unable at that time to display compliance with the net asset requirement. The Exchange notes that no Fund listed on the NYSE is currently below compliance with its continued listing standards.

⁵ Under Section 802.01A, a Fund is below compliance if (i) its total number of stockholders is less than 400; (ii) the number of total stockholders is less than 1,200 and the average monthly trading volume is less than 100,000 shares (for the most recent 12 months); or (iii) the number of publicly-held shares is less than 600,000.

⁶ Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more will be excluded in calculating the number of publicly-held shares and number of public shareholders for purposes of the proposed continued listing standards. The definition of publicly-held shares in the NYSE MKT rule is

(B) the total number of public shareholders is less than 300; or

(C) the total market value of shares publicly held is less than \$1,000,000 for more than 90 calendar consecutive days.

The Exchange and NYSE MKT are under common ownership and issuers listed on both markets are subject to oversight by the same regulatory staff. Therefore, the staff of NYSE Regulation responsible for regulation of both markets has observed over time the application of the NYSE MKT listing rules for Funds. In the staff's experience, Funds listed under the NYSE MKT Fund listing standards rarely become unsuitable over time for continued exchange trading. Consequently, the Exchange believes that, in adopting listing standards for Funds that are substantially similar to those of NYSE MKT, its proposed initial and continued listing standards for Funds would be consistent with the protection of investors.

The Exchange is also proposing to correct a typographical error in Section 802.01B.

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

worded differently but is applied in exactly the same way that the proposed NYSE provision would be applied.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed amendment is consistent with Section 6(b)(5) of the Act, as the initial and continued listing criteria set forth in the proposed rules are designed to protect investors and the public interest. As noted above, the Exchange's proposed amended listing requirements for Funds are substantively identical to those of NYSE MKT. The Exchange and NYSE MKT are under common ownership and issuers listed on both markets are subject to oversight by the same regulatory staff. Therefore, the staff of NYSE Regulation which is responsible for regulation of both the Exchange and NYSE MKT has observed over an extended period of time the application of the NYSE MKT listing rules for Funds. Over this extended period, the staff's experience has been that the application of the NYSE MKT Fund listing standards has resulted in the listing of Funds that have generally been suitable on an ongoing basis for exchange trading. Consequently, based on this experience, the Exchange believes that, by adopting amended initial and continued listing standards for Funds that are substantially the same as those of NYSE MKT, the Exchange would continue to have listing standards which would ensure that listed Funds are suitable for exchange trading. Consequently, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

The modification of the market capitalization level at which the Exchange provides an early warning to an issuer from \$25 million of average market capitalization over 30 trading days to \$10 million of market value of publicly held shares over 60 calendar days is consistent with the proposed amendment to the substantive continued listing standard. It would provide issuers with sufficient warning of any potential noncompliance and is therefore consistent with the protection of investors and the public interest.

The Exchange believes that the proposed amendment would facilitate the listing and trading of a greater number of Funds on the Exchange, enhancing competition among market participants, to the benefit of investors and the marketplace.

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 harmonize the Exchange's rules with those of NYSE MKT. As such, it is intended to promote competition for the listing of Funds by providing them with a greater number of listing venue alternatives.

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 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-08. 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 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 such 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-2017-08, 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.⁹

Brent J. Fields
Secretary

⁹ 17 CFR 200.30-3(a)(12).