

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81393; File No. SR-NYSE-2017-17)

August 14, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change to Provide Advance Notice of Dividend or Stock Distribution Announcements to the Exchange

I. Introduction

On June 13, 2017, 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 the NYSE Listed Company Manual (the “Manual”) to require listed companies to provide notice to the Exchange at least ten minutes before making any public announcement with respect to a dividend or stock distribution, including when the notice is outside of Exchange trading hours. The proposed rule change was published for comment in the Federal Register on June 30, 2017.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, the Exchange’s immediate news release policy, set forth in Section 202.06 of the Manual, requires companies releasing material news, between 7:00 A.M. and 4:00 P.M. Eastern Time to notify the Exchange’s Market Watch team by telephone at least ten minutes prior to issuing their announcement and, when the announcement is in written form, email a copy

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81021 (June 26, 2017), 82 FR 29966 (“Notice”).

of the proposed announcement to Market Watch at least ten minutes prior its release (“immediate news release policy”).⁴ In its proposal, NYSE stated that listed companies announcing dividend or stock distributions during the hours noted above are required to comply with the immediate news release policy in connection with such announcements.

In addition to announcing dividend or stock distributions publicly pursuant to the immediate news release policy, listed companies are also required to give prompt notice to the Exchange as to any dividend action or action relating to a stock distribution in respect of a listed stock (including the omission or postponement of a dividend action at the customary time as well as the declaration of a dividend) (“dividend or stock distribution notice”).⁵ The dividend or stock distribution notice must be given to the Exchange at least ten days in advance of the record date in accordance with the procedures set forth in Section 204.00 (Notice to and Filing with the Exchange) of the Manual.⁶ Section 204.12 further requires such dividend or stock distribution notice to be given to the Exchange as soon as possible after declaration and in any event, no later than simultaneously with the announcement to the news media.⁷ Section 204.21 of the Manual also requires listed companies to give prompt notice to the Exchange of the fixing of a date for

⁴ See Sections 202.05 (Timely Disclosure of Material News) and 202.06 (Procedure for Public Release of Information; Trading Halts) of the Manual.

⁵ See Section 204.12 (Dividends and Stock Distributions) of the Manual. Section 204.12 also sets forth specific requirements on the information required to be in the dividend or stock distribution notice to the Exchange.

⁶ See id. See also Section 204.21 (Record Date) of the Manual. Section 204.00(A) of the Manual requires that such notice must be provided via a web portal or email address specified by the Exchange on its website, except in emergency situations, when notification may instead be provided by telephone and confirmed by facsimile as specified by the Exchange on its website.

⁷ See Section 204.12 of the Manual.

the taking of a record of shareholders, or for the closing of transfer books (in respect of a listed security), for any purpose.⁸

The Exchange proposes to amend Sections 204.12 and 204.21 of the Manual to specify that notice of any dividend or stock distribution required by Section 204.12, or the fixing of a record date with respect to a dividend or stock distribution under Section 204.21, must be provided to the Exchange at least ten minutes before its public announcement to the news media, including when such announcement is being made outside of Exchange trading hours.⁹ The Exchange also proposes to amend Section 202.06(B) to explicitly state that listed companies must comply with the immediate news release policy with respect to all announcements relating to a dividend or stock distribution. The Exchange notes that this change is a “consistent interpretation” of its immediate news release policy.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule

⁸ See Section 204.21 (Record Date) of the Manual. The notice must state the purpose(s) for which the record date has been fixed and must be provided to the Exchange in accordance with Section 204.00. See also Section 204.12 of the Manual, supra note 5, and Rule 10b-7 of the Securities Exchange Act of 1934. Rule 10b-17, among other things, requires notice of a dividend to be given to a national securities exchange no later than 10 days prior to the record date. Id.

⁹ The Exchange states that it intends to have its staff available at all times to review dividend or stock distribution notices immediately upon receipt, regardless of the time or date the notices are received. See Notice, supra note 3, at 29967. The Exchange staff will contact a listed company immediately if there is a problem with its notification. Id.

¹⁰ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

change is consistent with Section 6(b)(5) of the Exchange Act,¹¹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed amendments to the Manual are consistent with the protection of investors and the public interest in accordance with Section 6(b)(5) of the Act in that the changes should allow Exchange staff to resolve any rule compliance issues with a listed company's dividend or stock distribution action prior its public announcement. In this regard, the Commission notes that in addition to requiring ten days advance notice of a record date, Section 204.12 of the Manual requires listed companies to provide specific information in its notice to the Exchange concerning any dividend action or action relating to stock distributions. This information is important because, among other things, it provides information concerning the record date, which determines when the stock will trade on the Exchange ex-dividend or ex-distribution, as well as requirements to set forth the brokers' cut off dates for determining full and fraction share requirements after the record date. The Commission also notes that Rule 10b-17 of the Exchange Act sets forth specific information that must be provided by listed companies to the Exchange in setting record dates for dividends and stock distributions.

By requiring listed companies to provide the Exchange dividend or stock distribution notices at least ten minutes prior to the public announcement of a distribution, irrespective of the time of day (rather than limited to the hours of 7:00 A.M. and 4:00 P.M. as in the current rule),

¹¹ 15 U.S.C. 78f(b)(5).

the Exchange should be able to address any concerns with the content of such notifications (including the ten day advance notice requirement), to ensure compliance with both Exchange and Commission rules, consistent with investor protection and the public interest. In addition, the proposed amendments are reasonably designed to reduce the possibility for investor confusion in the marketplace resulting from the dissemination of inaccurate or misleading dividend or stock distribution information. Based on the above, the Commission finds that the changes to Sections 204.12 and 202.21 of the Manual requiring ten minutes advance notice of distributions prior to public announcements, whatever time of day issued, is consistent with Section 6(b)(5) in that it prevents fraudulent and manipulative act and practices as well as promoting investor protection and the public interest. Finally, the Commission finds that the proposed amendments to Section 202.06 of the Manual are consistent with the Exchange Act in that they will provide transparency and clarity to listed companies on the application of the immediate news release policy to dividend or stock distribution announcements.

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹² that

¹² 15 U.S.C. 78f(b)(2).

the proposed rule change (SR-NYSE-2017-17) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).