

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84566; File No. SR-NYSE-2018-55)

November 9, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Listed Company Manual to Clarify the Application of the Initial Listing Requirements to Common Equity Securities Issued in Exchange for a Listed Equity Investment Tracking Stock

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 November 2, 2018, 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 Exchange. 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 the Listed Company Manual (the “Manual”) to clarify the application of the initial listing requirements to common equity securities issued in exchange for a listed Equity Investment Tracking Stock. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Section 102.07 of the Manual sets forth initial listing requirements applicable to the listing of Equity Investment Tracking Stocks. An Equity Investment Tracking Stock is defined as a class of common equity securities that tracks on an unleveraged basis the performance of an investment by the issuer in the common equity securities of a single other company listed on the Exchange. An Equity Investment Tracking Stock may track multiple classes of common equity securities of a single issuer, so long as all of those classes have identical economic rights and at least one of those classes is listed on the Exchange.⁴

The issuer of an Equity Investment Tracking Stock may seek (by a shareholder vote, exchange offer or other legally permissible means) to exchange outstanding shares of the Equity Investment Tracking Stock for newly issued shares of a non-tracking stock class of common equity securities pursuant to a specified exchange ratio. The common stock issued in this exchange may be of an already listed class or it may consist of shares of a class that is not

⁴ In order for an Equity Investment Tracking Stock to qualify for initial listing, it must meet the requirements of Sections 102.01A and 102.01B of the Manual and the issuer of the Equity Investment Tracking Stock must meet the Global Market Capitalization Test set forth in Section 102.01C. The Exchange will not list an Equity Investment Tracking Stock if, at the time of the proposed listing, the issuer of the equity tracked by the Equity Investment Tracking Stock has been deemed below compliance with the Exchange's listing standards. The issuer of the Equity Investment Tracking Stock must own (directly or indirectly) at least 50% of both the economic interest and voting power of all of the outstanding classes of common equity securities of the issuer whose equity is tracked by the Equity Investment Tracking Stock.

currently listed on the Exchange. However, the initial listing standards for common stock set forth in Section 102.01 of the Manual do not currently specify the listing standards applicable to a newly listed class of common stock issued in exchange for an Equity Investment Tracking Stock. Therefore, the Exchange proposes to amend Section 102.01 to clarify how the new class of common stock will be listed in such circumstances.

In light of the fact that there is a predecessor security listed on the NYSE, the Exchange believes that the listing of a common stock in exchange for shares of a listed Equity Investment Tracking Stock is more similar to a listing upon transfer from another exchange than it is to an initial public offering. Specifically, such an exchange is comparable to a transfer in that in both cases the Exchange is able to rely on the existence of both historical trading information and a liquid public trading market in making its listing determination. As such the Exchange proposes to apply to such listings the initial listing standards applicable to transfers. The Exchange notes that the initial listing standards for transfers and quotations are at least as high as those for IPOs and are more stringent in certain respects.

The Exchange proposes to amend Section 102.01A of the Manual to specify that such common equity securities listed upon consummation of an exchange for a listed Equity Investment Tracking Stock will be subject to the distribution requirements set forth in that rule for transfer and quotation listings. Section 102.01A provides that a company listing in connection with a transfer or quotation listing must have at least 1.1 million publicly held shares⁵ and meet one of the following additional distribution requirements:

- 400 shareholders of round lots (i.e., at least 100 shares); or

⁵ Shares held by directors, officers, or their immediate families and other concentrated holding of 10 percent or more are excluded in calculating the number of publicly-held shares wherever that term is used throughout this proposal.

- 2,200 total stockholders together with an average monthly trading volume of at least 100,000 shares over the most recent six months; or
- 500 total shareholders together with an average monthly trading volume of at least 1,000,000 shares over the most recent 12 months.

Section 102.01B of the Manual requires companies listing upon transfer from another exchange to demonstrate that they have \$100 million in market value of publicly held shares and a closing share price of \$4.00 per share.⁶ In applying these requirements to the listing of a new class of common stock in exchange for an Equity Investment Tracking Stock, the Exchange proposes to permit issuers to demonstrate their compliance by reference to the trading price and publicly-held shares outstanding of the Equity Investment Tracking Stock immediately prior to the consummation of the exchange, basing those calculations on the exchange ratio between the two securities.⁷ The Exchange believes this approach is justified, as the market price for the Equity Investment Tracking Stocking immediately prior to the consummation of the exchange will reflect the market's anticipation of the value of the common stock into which it will be exchanged.

Any company listing its primary class of common stock on the Exchange must meet one of the two financial tests in Section 102.01C of the Manual, the Earnings Test or the Global Market Capitalization Test. As the Earnings Test is based solely on the issuer's historical financial statements, there are no issues specific to issuers engaged in these sorts of exchanges of

⁶ Companies listing in connection with an IPO are required to have \$40 million in market value of publicly held shares.

⁷ In making listing qualification determinations, the Exchange will rely generally on information with respect to a company's shares outstanding, publicly-held shares and the exchange ratio as most recently disclosed in an SEC filing, but reserves the right to adjust those numbers if there have been significant changes in those numbers since the most recent SEC disclosure.

Equity Investment Tracking Stocks for common stock. However, the Global Market Capitalization Test requires the issuer to demonstrate that it has \$200 million in global market capitalization. In meeting this test, the Exchange proposes to permit issuers to demonstrate their compliance by reference to the trading price and shares outstanding of the Equity Investment Tracking Stock prior to the consummation of the exchange, basing those calculations on the exchange ratio between the two securities.⁸ The Exchange believes this approach is justified for the same reasons set forth above with respect to the stock price and publicly-held shares requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,¹⁰ 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

⁸ Section 102.01C provides, that, in considering the listing under the Global Market Capitalization Test of current publicly-traded companies, the Exchange will require such companies to meet the minimum \$200 million global market capitalization requirement and maintain a closing price of at least \$4 per share in each case for a period of at least 90 consecutive trading days prior to receipt of clearance to make application to list on the Exchange and will also consider whether the company's business prospects and operating results indicate that the company's market capitalization value is likely to be sustained or increase over time. The proposed rule text clarifies that these requirements will be applicable to the listing of a common stock issued in exchange for an Equity Investment Tracking Stock.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers. The proposal to apply the same initial listing standards to the listing of a new common stock issued in exchange for an Equity Investment Tracking Stock as are applied to transfers and quotation listings is designed to protect investors and the public interest because the applicable standards are the most stringent standards applied to the listing of common equities on the Exchange. The proposal to use the trading price and shares outstanding of the Equity Investment Tracking Stock immediately prior to the exchange, as adjusted by the exchange ratio, in conducting its initial listing analysis will provide the Exchange with relevant information about the characteristics of the trading market for the issuer's securities which will be predictive of the market for the common stock into which the Equity Investment Tracking Stock will be exchanged. As such, this information will be helpful to the Exchange in making its initial listing determination.

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 sole purpose of the proposal is to clarify the application of the initial listing requirements to common equity securities issued in exchange for a listed Equity Investment Tracking Stock. As such, the Exchange does not believe the proposal imposes 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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 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)¹³ 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2018-55 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-2018-55. 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSE-2018-55, 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).