

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85889; File No. SR-NYSE-2019-20)

May 17, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Section 302 of the Listed Company Manual to Provide Exemptions for the Issuers of Certain Categories of Securities from the Obligation to Hold Annual Shareholders' Meetings

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 6, 2019, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "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 Section 302 of the Listed Company Manual (the "Manual") to provide exemptions for the issuers of certain categories of securities from the obligation to hold annual shareholders' meetings. 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 302 of the Manual provides that listed companies are required to hold an annual shareholders' meeting during each fiscal year.

Section 303A.00 of the Manual provides that preferred and debt listings, passive business organizations in the form of trusts (such as royalty trusts) and derivative and special purpose securities are not required to comply with certain of the corporate governance requirements set forth in Section 303A.⁴ Section 303A.00 does not exclude the obligation to hold an annual meeting pursuant to Section 302 from those requirements with which such issuers must comply.

Holders of non-voting preferred and debt securities, securities of passive business organizations (such as royalty trusts) and derivative and special purpose securities either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances. For example, holders of non-voting preferred securities may have the right to temporarily elect directors if dividends on such securities have not been paid for a specified period of time. Absent such special circumstances, in no event do holders of the securities listed above elect directors on an annual basis. Despite the fact that there is no matter with respect to which holders of these securities have an annual voting right under state law or

⁴ To the extent that Rule 10A-3 under the Act applies to (i) companies listing only preferred or debt securities, or (ii) passive business organizations, such entities are required to comply with the requirements of Section 303A.06 (Audit Committee) and certain provisions of 303A.12(b) (Certification Requirements).

their governing documents, NYSE rules currently do not exclude the issuers of such securities from the requirement that they hold an annual meeting of shareholders.

The Exchange now proposes to amend Section 302 to provide that issuers of these securities would not be required to hold an annual meeting. Specifically, Section 302 as amended would specify that the annual meeting requirement does not apply to companies whose only securities listed on the Exchange are non-voting preferred and debt, passive business organizations (such as royalty trusts), or securities listed pursuant to Rules 5.2(j)(2) (Equity Linked notes), 5.2(j)(3) (Investment Company Units), 5.2(j)(4) (Index-Linked Exchangeable Notes), 5.2(j)(5) (Equity Gold Shares), 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.400 (Paired Trust Shares), 8.600 (Managed Fund Shares) and 8.700 (Managed Trust Securities). The Exchange is also amending the rule text to make clear that, if an issuer also lists common stock or voting preferred stock, or their equivalent, such issuer must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.⁵

The Exchange notes that the listing rules of NYSE Arca, Inc. (“NYSE Arca”), the NASDAQ Stock Market LLC (“NASDAQ”), Cboe BZX Exchange, Inc. (“Cboe BZX”) and NYSE American LLC (“NYSE American”) all provide exclusions for issuers of ETFs and other

⁵ This proposed clarifying language is identical to that used in the NYSE Arca and NASDAQ annual meeting rule. See NYSE Arca Rule 5.3-E(e) and NASDAQ Marketplace Rules IM-5620.

derivative securities products from the annual meeting requirements in their rules.⁶ The following are rules for derivative and special purpose securities listed on the Exchange and, in each case, a reference to a rule of either NYSE Arca, NYSE American or NASDAQ providing for the listing of similar securities on NYSE Arca, NYSE American or NASDAQ that are explicitly excluded from the annual meeting requirement on such exchange:

- NYSE Rule 5.2(j)(2) (Equity Linked Notes): NYSE Arca Rule 5.2-E(j)(2) (Equity Linked Notes) and NYSE American Company Guide Section 107B (Equity Linked Term Notes);
- NYSE Rule 5.2(j)(3) (Investment Company Units): NYSE Arca Rule 5.2-E(j)(3) (Investment Company Units) and NYSE American Rule 1002A (Index Fund Shares);
- NYSE Rule 5.2(j)(4) (Index-Linked Exchangeable Notes): NYSE Arca Rule 5.2-E(j)(4) (Index Linked Exchangeable Notes) and NYSE American Company Guide Section 107C (Index Linked Exchangeable Notes);
- NYSE Rule 5.2(j)(5) (Equity Gold Shares): NYSE Arca Rule 5.2-E(j)(5) (Equity Gold Shares) and NASDAQ Marketplace Rule 5711(b) (Equity Gold Shares);
- NYSE Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities): NYSE Arca Rule 5.2-E(j)(6) (Index Linked Securities) and NYSE American Company Guide Sections 107D (Index-Linked Securities, 107E (Commodity-Linked Securities),

⁶ See Exchange Act Release No. 83324 (SR-NYSEArca-2018-31) (May 24, 2018); 83 FR 25076 (May 31, 2018) (approving [sic] amendments to NYSE Arca Rule 5.3(e)-E). See also NASDAQ Marketplace Rules IM-5620, Cboe BZX Rule 14.10, Interpretations and Policies 15; and NYSE American Company Guide Section 704, Commentary .01.

- 107F (Currency-Linked Securities), 107G (Fixed Income-Linked Securities), 107H (Futures-Linked Securities), and 107I (Combination-Linked Securities);
- NYSE Rule 8.100 (Portfolio Depository Receipts): NYSE Arca Rule 8.100-E (Portfolio Depository Receipts) and NYSE American Rule 1000A [sic] (Portfolio Depository Receipts);
 - NYSE Rule 8.200 (Trust Issued Receipts): NYSE Arca Rule 8.200-E (Trust Issued Receipts) and NYSE American Rule 1202 (Trust Issued Receipts);
 - NYSE Rule 8.201 (Commodity-Based Trust Shares): NYSE Arca Rule 8.201-E (Commodity Based Trust Shares) and NYSE American Rule 1200A (Commodity Based Trust Shares);
 - NYSE Rule 8.202 (Currency Trust Shares): NYSE Arca Rule 8.202-E (Currency Trust Shares) and NYSE American Rule 1202B (Currency Trust Shares);
 - NYSE Rule 8.203 (Commodity Index Trust Shares): NYSE Arca Rule 8.203-E (Commodity Index Trust Shares) and NASDAQ Marketplace Rule 5711(f) (Commodity Index Shares);
 - NYSE Rule 8.204 (Commodity Futures Trust Shares): NYSE Arca Rule 8.204-E (Commodity Futures Trust Shares) and NASDAQ Marketplace Rule 5711(g)(Commodity Futures Trust Shares);
 - NYSE Rule 8.300 (Partnership Units): NYSE Arca Rule 8.300-E (Partnership Units) and NYSE American Rule 1502 (Partnership Units);
 - NYSE Rule 8.400 (Paired Trust Shares): NYSE Arca Rule 8.400-E (Paired Trust Shares) and NYSE American Rule 1402 (Paired Trust Shares);
 - NYSE Rule 8.600 (Managed Fund Shares): NYSE Arca Rule 8.600-E;

- NYSE Rule 8.700 (Managed Trust Securities): NYSE Arca Rule 8.700-E.

Shareholders of ETFs and derivative securities products listed on the Exchange receive regular disclosure documents describing the pricing mechanism for their securities and detailing how they can value their holdings. Moreover, the net asset value of the categories of ETFs and other derivative securities products listed above is determined by the market price of each fund's underlying securities or other reference asset. Because shareholders can value their investments on an ongoing basis, the Exchange believes that there is less need for shareholders to engage management at an annual meeting. In addition, while holders of such securities may have the right to vote in certain limited circumstances, they do not have the right to vote on the annual election of a board of directors, further eliminating the need for an annual meeting.

Notwithstanding the existence of an exemption from the Exchange's annual shareholder meeting requirement as proposed to be amended, issuers of listed securities will remain subject to any applicable state and federal securities laws with respect to the holding of annual meetings; as a result, an issuer that lists one or more of the types of securities that the Exchange proposes to exclude from its annual meeting requirement may still be required to hold annual shareholder meetings in accordance with such state and federal securities laws. In addition, the Exchange notes that issuers of NYSE-listed securities, including the types of securities that the Exchange proposes to exclude from its annual meeting requirement, remain subject to state and federal securities laws that may require other types of shareholder meetings, such as special meetings of shareholders. For example, exchange-traded funds are registered under, and remain subject to, the Investment Company Act of 1940 ("Investment Company Act"), which imposes various shareholder-voting requirements that may be applicable to such funds.⁷

⁷ See, e.g., Section 16 of the Investment Company Act, which requires, among other

Lastly, the Exchange notes that any security listed under Section 703.19 of the Manual (“Other Securities”) that has the attributes of common stock or voting preferred stock, or their equivalents will still be subject to the Exchange’s annual meeting requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,⁹ 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 that the proposed amendment is consistent with the protection of investors, as the holders of non-voting preferred stock, bonds, the listed shares of passive business organizations (such as royalty trusts), ETFs and certain other derivative and special purpose securities do not have voting rights with respect to the election of directors except in very limited circumstances as required by state law or their governing documents. In addition, the net asset value of the categories of ETFs and other derivative securities products that the Exchange proposes to exclude from its annual meeting requirement is determined by the market price of each fund’s underlying securities or other reference asset. Shareholders of such ETFs

things, an investment company’s initial board of directors to be elected by the shareholders at an annual or special meeting. 15 U.S.C. 80a-16(a).

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(5).

and derivative securities products listed on the Exchange receive regular disclosure documents describing the pricing mechanism for their securities and detailing how they can value their holdings. Accordingly, holders of such securities can value their investment on an ongoing basis. Because of these factors, the Exchange believes there is no need for the issuers of such securities to hold annual shareholder meetings.

Further, notwithstanding the existence of an exemption from the Exchange's annual shareholder meeting requirement as proposed to be amended, issuers of listed securities will remain subject to any applicable state and federal securities laws with respect to the holding of annual meetings; as a result, an issuer that lists one or more of the types of securities that the Exchange proposes to exclude from its annual meeting requirement may still be required to hold annual shareholder meetings in accordance with such state and federal securities laws. In addition, the Exchange notes that issuers of NYSE-listed securities, including the types of securities that the Exchange proposes to exclude from its annual meeting requirement, remain subject to state and federal securities laws that may require other types of shareholder meetings, such as special meetings of shareholders.

Lastly, the Exchange notes that any security listed under Section 703.19 of the Manual ("Other Securities") that has the attributes of common stock or voting preferred stock, or their equivalents will still be subject to the Exchange's annual meeting requirements.

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 amendments will not impose any burden on competition, as they simply conform the

Exchange's rules to those of its competitors in the market for the listing of the specified types of securities.

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 [sic] 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-2019-20 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-2019-20. 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 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. 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-

2019-20 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.¹⁰

Eduardo A. Aleman
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).