

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85990; File No. SR-NYSE-2019-32)

May 31, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rule 123D

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 24, 2019, 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 and II 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 Rule 123D to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the Exchange. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 123D to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the Exchange.

Proposed Rule Change

Current Rule 123D(d) permits the Exchange to declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 (the “OTC market”) immediately prior to the initial pricing. Accordingly, the Exchange has authority to declare a regulatory halt for any initial listing that is not a transfer from either another national securities exchange or the OTC market. Regulatory halts under the rule terminate when the DMM opens the security.

The Exchange proposes to delete the clause “or traded in the over-the-counter market pursuant to FINRA Form 211” before “immediately prior to the initial pricing.” The proposed amendment would thus enable the Exchange to declare a regulatory halt for a security that is having its initial listing on the Exchange that was traded in the OTC market immediately prior to its initial pricing on the Exchange.

The Exchange believes that it would be consistent with the protection of investors and the public interest for the Exchange, as a primary listing exchange, to have authority to declare a regulatory halt for security that was previously traded in the OTC market prior to its initial

pricing on the Exchange. An OTC market security that will be listed on a primary listing exchange will be removed from the OTC trading list on the day prior to its initial pricing on the Exchange. However, on the day of its initial listing, such security can trade on an unlisted trading permit (“UTP”) basis before the first transaction on the primary listing exchange. The Exchange believes that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would avoid potential price disparities or anomalies that may occur during any UTP trading before the first transaction on the primary listing exchange. More specifically, the Exchange believes that quoting and trading in the pre-market of an OTC transfer can be erratic and investors may be harmed if their securities trade during this period. The Exchange believes that the proposed limited authority to declare a regulatory halt in the hours prior to the OTC transfer pricing on the Exchange would mitigate any potential price disparities and contribute to a fair and orderly market once the security opens on the Exchange. The Exchange believes that such authority would be consistent with the protection of investors and the public interest.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that the proposed amendment to Rule 123D to provide authority to declare a regulatory halt in a security that is an OTC transfer would remove impediments to

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system by providing the Exchange with authority to halt trading across all markets for a security that has traded in the OTC market and not previously listed on the Exchange, but for which a regulatory halt would promote fair and orderly markets. The Exchange believes that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would avoid potential price disparities or anomalies that may occur during any UTP trading before the first transaction on the primary listing exchange. More specifically, the Exchange believes that quoting and trading in the pre-market of an OTC transfer can be erratic and investors may be harmed if their securities trade during this period. The Exchange therefore believes that having the authority to declare a regulatory halt for a security that is the subject of an OTC transfer is consistent with the protection of investors and the public interest and would promote fair and orderly markets by helping to protect against volatility in pricing before the initial transaction on the primary listing exchange.

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 Exchange believes that the benefit to investors to halt trading in a security that transfers from an OTC market to a primary listing exchange outweighs any burden on competition that may result from a regulatory halt in such security before the initial listing on the primary listing exchange. The proposed rule change is consistent with existing authority for the Exchange to declare a regulatory halt in trading of a security before the initial pricing on the Exchange and would extend that authority to a transfer from the OTC market.

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 within such longer period 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-2019-32 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-2019-32. 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-2019-32, 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.⁵

Eduardo A. Aleman
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).