

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86406; File No. SR-NYSE-2019-20)

July 18, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a 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

I. Introduction

On May 6, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 302 of the NYSE Listed Company Manual (“Manual”) regarding the annual shareholder meeting requirement. The proposed rule change was published for comment in the Federal Register on May 23, 2019.³ The Commission has received no comment letters on the proposal. On July 3, 2019, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85889 (May 17, 2019), 84 FR 23815 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 86291 (July 3, 2019), 84 FR 32802 (July 9, 2019). The Commission designated August 21, 2019, as the date by which the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

Section 302 of the Manual provides that listed companies are required to hold an annual shareholders' meeting during each fiscal year. The Exchange has proposed to amend Section 302 of the Manual to provide 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 also proposed to amend the rule text to make clear that, if an issuer also lists common stock (which the Commission notes can be either voting or non-voting 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.⁶

According to the Exchange, 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

⁶ See NYSE Arca, Inc. Rule 5.3-E(e) and Rule IM-5620 of The Nasdaq Stock Market LLC.

elect directors only in very limited circumstances.⁷ 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.⁸ The Exchange stated in its proposal that absent such special circumstances, in no event do holders of the securities listed above elect directors on an annual basis.⁹ The Exchange further stated that 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 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.¹⁰

The Exchange further stated that 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.¹¹ In addition, the Exchange noted that 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.¹² The Exchange stated that it believes that there is less need for shareholders to engage management at an annual meeting because shareholders can value their investments on an ongoing basis.¹³ The Exchange further stated that, while holders of such securities may have

⁷ See Notice, supra note 3, at 23815.

⁸ See id.

⁹ See id.

¹⁰ See Notice, supra note 3, at 23815-16.

¹¹ See Notice, supra note 3, at 23816.

¹² See id.

¹³ See id.

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.¹⁴

The Exchange stated in its proposal that, 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 and any other types of shareholder meetings.¹⁵ For example, the Exchange noted that ETFs 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.¹⁶ The Exchange further noted that any security listed under Section 703.19 of the Manual that has the attributes of common stock or voting preferred stock, or their equivalents, would still be subject to the Exchange’s annual meeting requirements.¹⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁸ In particular, the Commission finds that the proposed rule change is

¹⁴ See id.

¹⁵ See id.

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

¹⁷ See Notice, supra note 3, at 23816.

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

consistent with Section 6(b)(5) of the Act,¹⁹ 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 Exchange's proposal to exclude issuers of certain categories of securities from the obligation to hold annual shareholders' meetings is consistent with the Act. The Commission believes the right of shareholders to vote at an annual meeting is an essential and important one. The Commission, however, believes that the requirement to hold an annual shareholder meeting may not be necessary for certain issuers of specific types of securities because the holders of such securities do not directly participate as equity holders and vote in the annual election of directors or generally on the operations or policies of the listed company.

The Commission notes that NYSE's amended annual shareholder meeting requirement remains subject to any applicable state and federal securities laws that relate to such annual meetings. As a result, a company that lists one or more of the types of securities set forth in amended Section 302 of the Manual may still be required to hold annual shareholder meetings in accordance with such state and federal securities laws. In addition, the Commission notes that issuers of NYSE listed securities, including the types of securities set forth in amended Section 302 of the Manual, 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

¹⁹ 15 U.S.C. 78f(b)(5).

traded funds, that are open-ended management investment companies, are registered under, and remain subject to, the Investment Company Act, which imposes various shareholder-voting requirements that may be applicable to such funds.²⁰

The proposal also clarifies that the right not to hold an annual shareholder meeting, as set forth in amended Section 302 of the Manual, applies only with respect to the particular securities specified in amended Section 302. Thus, although the proposed rule change excludes a particular NYSE listed company from holding an annual shareholder meeting with respect to, and as a result of listing, the specific type of security specified in amended Section 302 of the Manual, if such company also lists other common stock or voting preferred stock, or their equivalent, such company must nevertheless hold an annual meeting for the holders of such securities during each fiscal year.²¹

The proposed changes to Section 302 of the Manual will also continue to require companies listing common stock to hold an annual meeting irrespective of whether the listed class of common stock is voting or non-voting stock. This is consistent with the rules of other national securities exchanges and will ensure that all common stock shareholders, whether holders of voting or non-voting common stock, have an opportunity at a shareholder meeting to

²⁰ See e.g., Section 16 of the Investment Company Act, which requires, among others, 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). The Commission notes that closed-end management investment companies are still required to hold annual meetings under Section 302 of the Manual.

²¹ The Commission notes, for example, that some of the companies issuing one of the enumerated listed securities excluded from the annual meeting requirement may also have their common stock listed on the NYSE and in that case would, as noted above, be subject to the annual meeting requirement in Section 302 of the Manual.

engage with management to discuss company affairs as well as, if required by a listed company's governing documents, to elect directors.²²

Given the limited rights and other interests of the holders of those securities specified in amended Section 302 of the Manual and the applicability of federal and state securities laws that govern shareholder meetings, the Commission believes that the proposed rule change reasonably sets forth the scope of the annual shareholder meeting requirement and will ensure that the appropriate NYSE listed companies are required to hold annual shareholder meetings under NYSE rules, for the benefit of investors and the public interest.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-NYSE-2019-20), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Jill M. Peterson
Assistant Secretary

²² See Securities Exchange Act Release Nos. 57268 (February 4, 2008), 73 FR 7614, 7616 (February 8, 2008) (SR-Amex-2006-31) and 53578 (March 30, 2006), 66 FR 17532, 17533 (April 6, 2006) (SR-NASD-2005-073).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).