

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87821; File No. SR-NYSE-2019-67)

December 20, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Amend Chapter One of the Listed Company Manual to Modify the Provisions Relating to Direct Listings

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 11, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change. On December 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, is 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, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter One of the Listed Company Manual (the “Manual”) to modify the provisions relating to direct listings.<sup>4</sup> The proposed rule change is

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange has previously filed a proposed rule change to amend Chapter One of the Manual to modify the provisions related to direct listings. See SR-NYSE-2019-67. The Exchange is now filing this Amendment No. 1 to SR-NYSE-2019-67 to make clear in Exhibit 5 to this filing that a company conducting a Primary Direct Floor Listing in which the company sells shares in the opening auction with a market value of less than \$100 million will be eligible to list if the aggregate of the market value of publicly-held shares immediately prior to listing together with the market value of shares sold by the

available on the Exchange’s website at [www.nyse.com](http://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 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 102.01B of the Manual includes initial listing requirements for a company that has not previously had its common equity securities registered under the Act, to list its common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares (a “Selling Shareholder Direct Floor Listing”).<sup>5</sup> To allow a company to sell shares on its own behalf in connection with its initial listing upon effectiveness of a registration statement, without a traditional underwritten public offering, the Exchange proposes to amend Section 102.01B. The proposed change would allow a company that has not previously had its common equity

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company in the opening auction totals at least \$250 million. This Amendment No.1 to SR-NYSE-2019-67 replaces SR-NYSE-2019-67 as originally filed and supersedes such filing in its entirety.

<sup>5</sup> Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (SR-NYSE-2017-30).

securities registered under the Act, to list its common equity securities on the Exchange at the time of effectiveness of a registration statement pursuant to which the company will sell shares in the opening auction on the first day of trading on the Exchange (a “Primary Direct Floor Listing”). The proposal would permit a company to conduct a Primary Direct Floor Listing in addition to, or instead of, a Selling Shareholder Direct Floor Listing.

In considering the initial listing of a company in connection with a Selling Shareholder Direct Floor Listing, Section 102.01B currently provides that the Exchange will determine that such company has met the applicable \$100 million aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation of the company (a "Valuation") and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market"). The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market. Alternatively, in the absence of any recent trading in a Private Placement Market, Section 102.01B provides that the Exchange will determine that such company has met its market value of publicly-held shares requirement if the company provides a Valuation evidencing a market value of publicly-held shares of at least \$250 million. With respect to this requirement, the Exchange is proposing the following:

- The Exchange proposes that a company would qualify for listing in connection with a Primary Direct Floor Listing by selling at least \$100 million in market value of shares in the opening auction.

- The Exchange proposes that a company would qualify for listing in connection with a Primary Direct Floor Listing if the aggregate of the market value of publicly-held shares immediately prior to listing together with the market value of shares sold by the company in the opening auction totals at least \$250 million.

The Exchange also proposes to modify the distribution requirements for listing in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing. Pursuant to Section 102.1A of the Manual, any company listing in connection with either a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing is required to have at least 400 round lot holders and 1.1 million publicly-held shares at the time of listing. Private companies generally do not have as many as 400 round lot shareholders, but this is typically not a barrier to listing for a company undertaking an initial public offering as the underwriters are able to ensure that the shares sold in the IPO are distributed to sufficient accounts to meet the Exchange's distribution standards. However, in the absence of an underwritten transaction at the time of listing, the initial listing distribution standards may represent more of a challenge for a private company contemplating listing in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing.

The Exchange believes that a Primary Direct Floor Listing in which the company sells at least \$250 million of its stock in the opening auction on the day of listing would provide an appropriately liquid trading market and make highly likely that the company would meet the initial listing distribution standards quickly after initial listing. Consequently, the Exchange proposes to amend Section 102.01A to provide that any company listing in connection with a Primary Direct Floor Listing in which the company sells at least \$250 million in market value of shares in the opening auction on the initial listing date may list and commence trading on the

basis that the company would have to demonstrate compliance with the distribution requirements within 90 trading days of the listing date (the “Distribution Standard Compliance Period”). Any company that fails to meet the distribution standards by the end of the Distribution Standard Compliance Period would be deemed to be below compliance. In that case, the company would have the opportunity to submit a compliance plan as set forth in the applicable procedures in Sections 802.02 and 802.03 of the Manual, but will not be granted a plan period that extends more than six months from the end of the Distribution Standard Compliance Period. If a company does not meet the initial listing distribution standards by the end of the maximum six month compliance period, it would be subject to immediate suspension and delisting.

In addition, the Exchange proposes to provide the benefit of the same Distribution Standard Compliance Period in the case of: (i) a company listing in connection with a Selling Shareholder Direct Floor Listing that demonstrates \$350 million in market value of publicly-held shares; and (ii) a Primary Direct Floor Listing in which the company sells less than \$250 million of its stock in the opening auction but has a market value of publicly-held shares immediately prior to listing together with the market value of shares sold by the company in the opening auction totaling at least \$350 million.

Currently, a company listing in connection with a Selling Shareholder Direct Floor Listing is required to demonstrate at the time of initial listing that it has at least 400 round lot holders and (i) at least \$100 million in market value of publicly-held shares based on the lower of a Valuation or the most recent trading price in a Private Placement Market or (ii) at least \$250 million in market value of publicly-held shares. The Exchange proposes that a company with \$350 million in market value of publicly-held shares (including in the case of a company listing in connection with a Primary Direct Floor Listing where the aggregate of the shares sold by the

company in the opening auction and the market value of the publicly-held shares outstanding immediately before the listing is at least \$350 million) may list and commence trading on the basis that the company would have to demonstrate compliance with the distribution requirements within 90 trading days of the listing date. The Exchange notes that the market value of publicly-held shares requirement for listings other than direct floor listings and IPOs is \$100 million, so the \$350 million public float that would be required under this proposal to use the Distribution Compliance Period is far higher than what a newly-listed company would have to demonstrate under other circumstances. The Exchange believes that this heightened standard significantly increases the likelihood that a liquid trading market will develop after a Selling Shareholder Direct Floor Listing or Primary Direct Floor Listing and therefore makes it likely that these companies will meet the initial distribution standards within the Distribution Standard Compliance Period.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>7</sup> 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.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed amendment is consistent with the protection of investors. The proposal would require that a company in a Primary Direct Floor Listing must either sell at least \$100 million of its listed securities in the opening auction or demonstrate that the sum of its market value of publicly-held shares immediately prior to listing and the market value of shares sold by the company in the opening auction is at least \$250 million. These requirements would provide that any company conducting a Primary Direct Floor Listing would be of a suitable size for Exchange listing and that there would be sufficient liquidity for the security to be suitable for auction market trading.

The proposal to provide a limited grace period for companies to meet the initial distribution requirements in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing is consistent with the protection of investors because the enhanced public float requirements of \$350 million for Selling Shareholder Direct Floor Listings and Primary Direct Floor Listings in which the company sells less than \$250 million in market value of shares in the opening auction and the \$250 million minimum opening trade requirement for all other Primary Direct Floor Listings would make it probable that there would be a quick development of a liquid trading market and that the company would comply with the initial listing distribution standards within the Distribution Standard Compliance Period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, but would rather increase competition by providing new pathways for companies to access the public markets.

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 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, as modified by Amendment No. 1, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2019-67 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-2019-67. 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-2019-67, 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.<sup>8</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).