

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82864; File No. SR-NYSEAMER-2018-07)

March 13, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE American Company Guide to Require that Listed Companies Provide Notice to the Exchange of Announcements of Dividends or Stock Distributions at Least Ten Minutes in Advance of Public Release

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 1, 2018, NYSE American LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 the NYSE American Company Guide (the “Company Guide”) to (i) require that listed companies provide notice to the Exchange of announcements of dividends or stock distributions at least 10 minutes in advance of public release, (ii) clarify the application of the immediate release policy to dividends and stock distributions, and (iii) adopt a provision specifying how listed companies must provide required notifications to the Exchange.

The proposed rule change is 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.

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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.

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

NYSE American LLC (“NYSE American” or the “Exchange”) proposes to amend the NYSE American Company Guide (the “Company Guide”) to (i) require that listed companies provide notice to the Exchange of announcements of dividends and stock distributions at least 10 minutes in advance of public release, (ii) clarify the application of the immediate release policy to dividends and stock distributions, and (iii) adopt a provision specifying how listed companies must provide required notifications to the Exchange.

Advance Notice Requirements for Dividends and Stock Distributions

Section 501 of the Company Guide currently requires listed companies to publicize and notify the Exchange immediately of any action taken in respect to the payment or non-payment of dividends. The Exchange proposes to amend Section 501 to require listed companies to provide notice to the Exchange at least 10 minutes before making any public announcement with respect to a dividend or stock distribution<sup>4</sup> in all cases (including the omission or postponement

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<sup>4</sup> The Exchange proposes to expand Section 501 to encompass stock distributions as well as cash dividends. The Exchange believes it is appropriate to treat stock distributions the same as cash dividends for this purpose as they have a similar effect on the economic interests of the shareholders and the trading market for the shares. This approach mirrors

of a dividend action at the customary time as well as the declaration of a dividend), including outside of the hours in which the Exchange's immediate release policy is in operation.<sup>5</sup> The rule as revised will provide that such notice is in addition to immediate publicity, should be given as soon as possible after declaration (but in any event at least ten days in advance of the record date), and should be given to the Exchange in accordance with proposed Section 405 (as described below).

The principal effect of this amendment is to require listed companies to provide 10 minutes advance notice to the Exchange with respect to a dividend or stock distribution announcement made at any time, rather than just during the hours of operation of the immediate release policy, as is currently the case. The amended policy would take effect as of April 1, 2018. A comparable amended dividend notification policy recently adopted by the New York Stock Exchange ("NYSE") was implemented on February 1, 2018.<sup>6</sup>

The Exchange believes there are significant benefits to requiring listed companies to provide all announcements of dividends and stock distributions to the Exchange prior to their public dissemination. In particular, if the Exchange is provided dividend and stock distribution information prior to its public availability, Exchange staff will be able to address any issues that may arise in relation to any announcement of a dividend or stock distribution. The proposed advance notice requirement will enable Exchange staff to ensure that a listed company's

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the approach taken in the comparable provision in the NYSE Listed Company Manual.

<sup>5</sup> Pursuant to Section 401(a) of the Company Guide, listed companies must comply with the Exchange's immediate release policy between 7:00 A.M. and 4:00 P.M., Eastern Time.

<sup>6</sup> See 82 FR 39485 (August 18, 2017); Securities Exchange Act Release No. 81393 (August 14, 2017) (SR-NYSE-2017-17). See also 82 FR 42712 (September 11, 2017); Securities Exchange Act Release No. 81531 (September 5, 2017) (SR-NYSE-2017-43) (delaying implementation of the amended NYSE dividend notice requirements).

proposed dividend or stock distribution schedule complies with applicable Exchange requirements, including the requirement to provide 10 days advanced notice of the record date, and that the company's disclosure of the application of the Exchange's "ex"-dividend trading policy will be accurate. The Exchange intends to have staff available at all times to review dividend and stock distribution notifications immediately upon receipt, regardless of what time or day of the week they are provided. The staff will contact a listed company immediately if there is a problem with its notification. Addressing problems with dividend and stock distribution notifications before they are issued publicly will avoid any confusion in the marketplace resulting from the dissemination of inaccurate information.

The Exchange proposes amendments to Sections 503 and 504 to conform to the proposed revisions to Section 501. The proposed amendments to Section 503 would: (i) specify that the company announcing a cash or stock dividend should comply with the notification requirements set forth in proposed Section 405 and proposed amended Section 501, as well as the immediate release policy set forth in proposed amended Sections 401(a) and (b) (as described below); and (ii) delete the detailed discussion in that rule of the methods by which companies comply with the immediate release policy, as that discussion is made redundant by the cross-reference to Sections 401(a) and (b). The proposed amendments to Section 504 would specify that announcements with respect to non-payment of dividends should be provided to the Exchange pursuant to Section 501 and issued to the public pursuant to the immediate release policy set forth in Sections 401 and 402 and that the notice and announcement should be in the form specified in Section 503.

#### Application of Immediate Release Policy to Dividends

Section 401(a) of the Company Guide provides that a listed company is required to make immediate public disclosure of all material information concerning its affairs, except in unusual circumstances (referred to as the Exchange’s “immediate release policy”). When such disclosure is to be made between 7:00 A.M. and 4:00 P.M., Eastern Time, it is essential that the Exchange be notified at least ten minutes prior to the announcement. The Exchange proposes to add commentary to Section 401(a), to clarify that listed companies must comply with the notification procedures in Sections 401(a) and (b) with respect to all announcements relating to a dividend or stock distribution when such disclosure is to be made between 7:00 A.M. and 4:00 P.M., Eastern Time. The proposed commentary would also specify that listed companies must also comply with the notification requirements of proposed amended Section 501 with respect to all such announcements, including outside of the hours of operation of the immediate release policy.

#### Uniform Method for Providing Notifications to the Exchange

The Exchange proposes to adopt as new Section 405 of the Company Guide a provision that will specify how listed companies must comply with rules requiring them to provide notifications to the Exchange, including under Section 501. This proposed provision is substantively the same as Section 204.00(A) of the NYSE Listed Company Manual.<sup>7</sup> At the time of initial adoption, Section 405 would only apply initially to notifications required under proposed amended Section 501.

Under proposed Section 405, the company shall provide such notice via a web portal or email address specified by the Exchange on its website (and the Exchange shall promptly update and prominently display the applicable information on its website in the event that it ever changes), except in emergency situations, when notification may instead be provided by

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<sup>7</sup> See Securities Exchange Act Release No. 68635 (January 11, 2013); 78 FR 3958 (January 17, 2013) (SR–NYSE–2012–54).

telephone and confirmed by facsimile as specified by the Exchange on its website. For purposes of Section 405, an emergency situation will include lack of computer or internet access; a technical problem on the systems of either the listed company or the Exchange; or an incompatibility between the systems of the listed company and the Exchange. Section 405 will remind listed companies that they must continue to use the Exchange's telephone alert procedures when notifying the Exchange of any material event or a statement dealing with a rumor which calls for immediate release under Section 401. If a rule containing a notification requirement does not specify that such requirement must be met by complying with the notification procedures set forth in Section 405, the company will be permitted to use the methods provided by Section 405 or any other reasonable method. Section 405 will state that listed companies are encouraged to contact their Exchange representative if they have any questions about the appropriate method of providing notification under applicable Exchange rules.

The purpose of proposed Section 405 is to clarify the methods by which listed companies must notify the Exchange when certain events occur. By creating a uniform method of notification by web portal or email for Exchange notification requirements, the Exchange may reduce the likelihood that companies make a mistake when trying to notify the Exchange of important events. In particular, timely notification with respect to dividends and other distributions is critical to allow investors time to make arrangements to be holders of a security by a certain date for a distribution or shareholder meeting. In such cases, it makes sense to require listed companies to give notice to the Exchange using current, efficient electronic methods that more easily lend themselves to accurate recordkeeping than manual or written methods.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b)<sup>8</sup> of the Act, in general, and further the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular in that they are 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment to Section 501 of the Company Guide and the conforming amendments to Sections 503 and 504 are consistent with the protection of investors and the public interest in accordance with Section 6(b)(5) of the Act in that the changes should allow Exchange staff to resolve any rule compliance issues with a listed company's dividend or stock distribution action prior its public announcement. By requiring listed companies to provide the Exchange dividend or stock distribution notices at least ten minutes prior to the public announcement of a distribution, irrespective of the time of day (rather than limited to the hours of 7:00 a.m. and 4:00 p.m. as in the current rule), the Exchange should be able to address any concerns with the content of such notifications (including the ten day advance notice requirement), to ensure compliance with both Exchange and Commission rules, consistent with investor protection and the public interest. In addition, the proposed amendments are reasonably designed to reduce the possibility for investor confusion in the marketplace resulting from the dissemination of inaccurate or misleading dividend or stock distribution

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

information.

The Exchange believes that the proposed amendments to Section 401(a) of the Company Guide are consistent with the Act in that they will provide transparency and clarity to listed companies on the application of the immediate news release policy to dividend or stock distribution announcements.

The Exchange believes that the adoption of proposed Section 405 of the Company Guide is consistent with the protection of investors and the public interest in accordance with Section 6(b)(5) of the Act because it is intended to clarify the methods by which listed companies must notify the Exchange when certain events occur. By creating a uniform method of notification by web portal or email for Exchange notification requirements, the Exchange may reduce the likelihood that companies make a mistake when trying to notify the Exchange of important events. In particular, timely notification with respect to dividends and other distributions is critical to allow investors time to make arrangements to ensure that they are holders of a security on the record date for a distribution or shareholder meeting. In such cases, it makes sense to require listed companies to give notice to the Exchange using current, efficient electronic methods that more easily lend themselves to accurate recordkeeping than manual or written methods.

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

The Exchange believes that the proposed amendments to the Company Guide do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change does not affect competition in any way. Rather, the proposed rule changes will (i) enable the Exchange to be aware of all dividend announcements before they are made so that Exchange staff is appropriately informed to enable

it to address any rule compliance problems with a listed company's dividend schedule before it is publicly announced and (ii) specify a uniform approach to providing notifications to the Exchange.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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.

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:

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-NYSEAMER-2018-07 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-NYSEAMER-2018-07. 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-NYSEAMER-2018-07, 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>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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