

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69970; File No. SR-NYSE-2013-47)

July 11, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 312.07 of the Listed Company Manual to Remove the 50% Quorum Requirement and Add Certain Clarifying Language

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 28, 2013, New York Stock Exchange LLC (“NYSE” or “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 Section 312.07 of the Listed Company Manual (the “Manual”) to remove the requirement that the total vote cast on any proposal requiring shareholder approval under NYSE rules must represent over 50% in interest of all securities entitled to vote on the proposal.

The text of 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.

¹ 15 U.S.C.78s(b)(1).

² 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 312.07 of the Manual to remove the requirement that the total vote cast on any proposal requiring shareholder approval under NYSE rules must represent over 50% in interest of all securities entitled to vote on the proposal.³

Section 312.07 establishes voting requirements for any shareholder meeting proposal where shareholder approval of that proposal is a prerequisite to the listing of any additional or new securities.⁴ The rule requires approval by a majority of votes cast on any such proposal, subject to a quorum requirement that the total vote cast on the proposal must represent over 50% in interest of all securities entitled to vote on the proposal.⁵

³ The Commission notes that the Exchange has also proposed to amend Section 312.07 to add "or where any matter requires shareholder approval" to the rule text.

⁴ Section 312.03 of the Manual requires shareholder approval of the sale or transfer by the listed company of shares of common stock or securities convertible into or exercisable for common stock where the size of the issuance exceeds thresholds established in the rule or would result in a change of control. Section 303A.08 requires shareholder approval of equity compensation plans and material amendments thereto.

⁵ Section 306.00 of the Manual provides that listed companies may use written consents in lieu of a special meeting to the extent permitted by applicable state and federal law and rules (including interpretations thereof), including, without limitation, Regulations 14A and 14C under the Act.

The Exchange notes that listed companies are subject to quorum requirements under the laws of their states of incorporation.⁶ In addition, the by-laws or other governing documents of listed companies frequently include more stringent voting requirements than imposed by state law.⁷ In light of the protection afforded to shareholders by those other applicable requirements, the Exchange believes that the quorum requirement of Section 312.07 is unnecessary. The Exchange also believes that requiring companies to comply with a separate NYSE quorum requirement with respect to a limited category of proposals is confusing to companies and their shareholders, as it requires companies to disclose and apply two separate quorum requirements with respect to those matters, while applying only the requirements of their certificate of incorporation or bylaws or state law for all other proposals being voted on at the meeting.⁸ The

⁶ For example, Delaware allows companies to establish their own quorum requirements in their certificates of incorporation or bylaws, provided that the quorum must be at least one-third of the shares entitled to vote on the matter. In the absence of a quorum provision in the company's certificate of incorporation or bylaws, Delaware requires a quorum of 50% of the shares entitled to vote on the matter. See Del. Code Sec. 216.

⁷ Section 310.00 of the Manual provides that the quorum required for any meeting should be sufficiently high to insure a representative vote and that the Exchange will give careful consideration to provisions fixing any proportion less than a majority of the outstanding shares as the quorum for shareholders' meetings. Section 310 provides that the Exchange will generally not object to reasonable lesser quorum requirements if the company solicits proxies for shareholder meetings. Typically, companies seeking to list on the Exchange require a majority of outstanding shares as the quorum for a shareholders' meeting. On occasion, however, the Exchange has listed a company with a quorum requirement of less than a majority of outstanding shares consistent with applicable state law. The Exchange is not aware, however, that any company with a quorum requirement of less than one-third of outstanding shares (except for companies entitled to rely on the provisions set forth in Section 103.00 of the Manual) has previously been listed on the Exchange. Additionally, the Exchange will not list a company with a quorum requirement of less than one-third of outstanding shares (except for companies entitled to rely on the provisions set forth in Section 103.00 of the Manual) going forward.

⁸ The Exchange notes that further confusion is generated by the different treatment of broker non-votes under Section 312.07 and state law. The broker non-vote at a shareholder meeting represents those shares held by brokers as registered holders on

Exchange also notes that neither of the other two primary equities listing markets in the United States – the NASDAQ Stock Exchange LLC (“NASDAQ”) and NYSE MKT LLC (“NYSE MKT”) – has a quorum requirement comparable to that included in Section 312.07.⁹

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹⁰ of the Exchange in general, and furthers the objectives of Section 6(b)(5)¹¹ of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment is consistent with the protection of investors and the public interest in that the laws of the various states have quorum requirements and many companies’ own by-laws establish more stringent requirements than imposed by state law.

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

The Exchange does not believe that the proposed rule change will result in any burden on

behalf of beneficial owners who do not provide voting instructions. Under some state law, broker non-votes are generally deemed to be present for quorum purposes. However, it has been the NYSE’s longstanding interpretation of Section 312.07 that broker non-votes should not be counted in determining whether a majority of the shares outstanding and entitled to vote have been voted. The NYSE’s treatment of broker non-votes for purposes of Section 312.07 has long been a source of confusion among listed companies and their service providers.

⁹ The Commission notes that under Section 312.07, the minimum vote which will constitute shareholder approval is a majority of votes cast on a proposal, and that Section 310 contains general quorum requirements that will still apply to all shareholder meetings as discussed in footnotes 7 and 16.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the competition among exchanges for listings is robust and vigorous, and the proposed rule change is not intended, nor is it expected, to reduce or diminish such competition. By conforming the NYSE's voting requirements to those of NASDAQ, the proposed rule change would potentially increase competition for listings of companies that are concerned about their ability to meet the existing NYSE quorum requirements.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange immediately to harmonize its quorum requirement for listed companies with analogous quorum requirements of other primary listing exchanges, such as NYSE MKT and NASDAQ. The Commission further notes that as a result of the rules of these other listing markets, listed companies can already list on a primary market while not having to comply with a 50% quorum requirement.¹⁶ Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.¹⁷

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

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ The Commission notes that, as discussed in footnote 7 above, Section 310.00 of the Manual provides that the quorum required for any meeting should be sufficiently high to insure a representative vote and that the Exchange will give careful consideration to provisions fixing any proportion less than a majority of the outstanding shares as the quorum for shareholders' meetings. Also, the Exchange has represented in footnote 7 above, that the Exchange is not aware that any company with a quorum requirement of less than one-third of outstanding shares (except for companies entitled to rely on the provisions set forth in Section 103.00 of the Manual) has previously been listed on the Exchange. In addition, the Exchange represented, in footnote 7, that it will not list a company with a quorum requirement of less than one-third of outstanding shares (except for companies entitled to rely on the provisions set forth in Section 103.00 of the Manual) going forward. The Commission notes that these quorum requirements, which apply to all shareholder meetings, including ones where the shareholder approval matters in Section 312 are presented, are at least as stringent as NASDAQ's (see NASDAQ Rule 5620(c)).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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:

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-2013-47 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- NYSE-2013-47. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR- NYSE-2013-47 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.¹⁸

Elizabeth M. Murphy
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).