GEORGETOWN McDONOUGH School of Business UNIVERSITY

James J. Angel, Ph.D., CFA
Associate Professor of Finance
Georgetown University[1]
McDonough School of Business
Washington DC 20057
angelj@georgetown.edu
1 (202) 687-3765
Twitter: @GuFinProf

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Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

Re: NYSE Listing Requirements

File SR-NYSE 2017-30 and SR-NYSE 2017-12

Dear SEC:

This proposal should be approved promptly and without further delay or needless micromanagement by the SEC. The bureaucratic delays and expenses in approving this innocuous rule filing are a prime example of what is wrong with our regulatory system. The SEC resources wasted on paper shuffling exercises like this can and should be spent on more pressing SEC priorities.

The SEC badly needs more resources in order to do its job properly, but it is hard to make the case to Congress for more budget authority when the SEC has a history of squandering its scarce resources on proceedings like this. When I try to make the case to people in industry or on the Hill, the response I get is "If we give them more money they will just waste it."

[1] All opinions are strictly my own and do not necessarily represent those of Georgetown University or anyone else for that matter.

Background:

The sales and trading of securities are highly regulated in all jurisdictions in order to protect the public from fraudsters as well as to promote economic growth and stability. In the U.S., we rely upon a two-level protection scheme to ensure that the securities traded on our exchanges are legitimate. The first level stems from mandated disclosures under the federal securities laws. The second stems from the listing requirements of the exchanges operating as self-regulatory organizations (SROs) under the oversight of the SEC.

Under §19(b) of the Securities Exchange Act, the SEC is supposed to process SRO rule changes on a timely basis. Congress was so upset with the slowness of the SEC that it imposed these time deadlines on the SEC in §916 of Dodd-Frank. If the SEC does not formally approve or deny a rule change within the deadlines, the text of the statute decrees that the rule change "shall be deemed to have been approved by the Commission**."** **In plain English, Congress mandated that SRO rule filings should be innocent until proven guilty, and that the SEC should process these rule filings promptly and without delay.** Indeed, the whole philosophy of the SRO structure is that the SROs presumably have better information about their businesses and can do a better job of fine tuning the rules than the government. The role of the SEC is to make sure that self-regulation does not turn into selfish regulation.

NYSE listing requirements generally require either an IPO, a spinoff, or a transfer from another market. As it turns out, a company that otherwise meets NYSE listing requirements but does not fit in those categories would not technically qualify to list on the NYSE. For example, a large company that already has many investors but did not need additional capital through an IPO would technically not qualify even though there is no public interest in excluding it from our exchanges. With the passage of the JOBS Act, it is much easier for companies to accumulate a large number of shareholders through private placements and employee stock plans without triggering a public offering.

My understanding is that the other listing exchanges (NASDAQ, BATS, NYSE-American, and IEX) do not have this same limitation, which puts the NYSE at a disadvantage in attracting new listings. The NYSE seeks to remedy this oversight and has accordingly filed a rule change, SR 2017-12, on March 27, 2017. **No comments were received.** This is a strong signal that there is nothing wrong with this proposal. SRO rule filings are closely monitored by people in the industry and if there are any alleged problems, comment letters usually point them out. Even when there are no real problems, opponents will usually dream some up and complain just to slow down the competition.

Nevertheless, despite this thundering lack of comment or opposition, the SEC apparently has nothing better to do than to draw out this process with excessive micromanagement. The result is a slow and expensive proceeding with no benefit to the public interest.

On May 12, 2017, the SEC exercised its statutory option to extend the length of time it had to ponder the rule change. The NYSE filed amendment number three on June 6, 2017, probably as a result of staff comments as there were no public comments. The NYSE withdrew the application in June, presumably as a result of still more SEC staff quibbles, and submitted a slightly modified version as SR 2017-30.

Apparently there is some concern about how the NYSE will open the market when there is no reliable previous price, and no expensive investment bankers to come up with an offering price. The NYSE has been opening stocks of all kinds for over two hundred years, and generally does a better job of setting the opening price than the investment bankers do of setting the offering price. The NYSE operates an auction that is overseen by experienced humans and they usually do a reasonable job. If they somehow get the offering price "wrong," the secondary market trading will quickly find the market price at which supply equals demand within a few minutes if not a few seconds. And if they do get the offering price "wrong" on a major offering, it will be a huge embarrassment to them that will harm their ability to attract new listings. When an exchange makes a mistake, its competitors don't hesitate to broadcast it, so the exchanges have the right incentive to get it right every time. No amount of fine print in the rules will improve on this powerful incentive.

There apparently is also a concern about how to figure out whether a company is big enough to meet the listing requirements. This should not be a major issue, as we can trust the market professionals at the NYSE to figure it out whether a company is big enough. The last thing that the Big Board would want to do is dilute its powerful big brand reputation by putting some tiny little company on its exchange. It can easily steer such companies to its NYSE American brand. Again, if a new listing were to start trading at a market capitalization far below the threshold, then it would be a large embarrassment to the exchange. The harm would be to the reputation of the NYSE, not to the investing public. Presumably the small issuer would still be living up to the high disclosure and corporate governance requirements associated with NYSE listing.

Respectfully submitted,

James J. Angel, Ph.D., CFA
Georgetown University