Martha Redding
Corporate Secretary

March 8, 2022

VIA E-MAIL

Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: SR-NYSE-2022-11

Dear Secretary

NYSE LLC, Inc. filed the attached Amendment No. 1 to the above-referenced filing on March 8, 2022.

Sincerely,

Encl. (Amendment No. 1 to SR-NYSE-2022-11)

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 11
Amendment No. (req. for Amendments *) 1

Filing by New York Stock Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * John Last Name * Carey

Title * Senior Director

E-mail * [redacted]

Telephone * [redacted] Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, New York Stock Exchange LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 03/08/2022

By David De Gregorio (Name *)

(Title *) Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

David De Gregorio

Digitally signed by David De Gregorio
Date: 2022.03.08 17:15:35 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View NYSE Fund shareholder approval exe	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View SR 2022 11 A1 ex 1.docx	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2- Notices, Written Comments, Transcripts, Other Communications Add Remove View	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. ☐ Exhibit Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add Remove View	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. ☐ Exhibit Sent As Paper Document
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View NYSE Fund shareholder approval exe	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] New York Stock Exchange LLC ("NYSE" or the "Exchange") proposes to amend Section 312.03 of the NYSE Listed Company Manual ("Manual") to provide a limited exemption from the shareholder approval requirements of that rule for listed closed-end funds.

The text of the proposed rule change is set forth in Exhibit 5 attached hereto.

(b) The Exchange does not believe that the proposed rule change would have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

John Carey
Senior Director
NYSE Group, Inc.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Amendment No. 1

The Exchange has previously submitted to the SEC a proposal to amend Section 312.03 of the Manual to provide a limited exemption from the shareholder

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

approval requirements of that rule for listed closed-end funds.[3] This Amendment No. 1 replaces and supersedes the original filing in its entirety.[4] This Amendment No. 1 is being filed to:

- make clarifications with respect to the description of the text of Section 312.03(b) of the Manual and Section 102.04 of the Manual;
- correct some typographical errors;
- clarify in the Statutory Basis section that there is a reduced risk of disenfranchisement of existing shareholders as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid, rather than stating that there is no risk of disenfranchisement at all; and
- replace a sentence in the Statutory Basis section of the Form 19b-4 that states that the interests of shareholders of the acquiring fund will not be diluted where the shares issued by the surviving fund are issued at a price equal to the surviving fund's net asset value. The deleted sentence is replaced with the following:

> To the Exchange's knowledge, the shares of the surviving Fund in a merger of affiliated Funds are generally issued at a price equal to the surviving Fund's net asset value, thereby ensuring that the transaction is not dilutive to the surviving Fund's shareholders. As described above, if the shares in such a merger are issued at any price other than net asset value, in order to rely on Rule 17a-8, the board of directors of the surviving Fund would have to make an affirmative determination that such price was not dilutive to the interests of its existing shareholders. Consequently, the Exchange believes that the proposed exemption would not result in issuances that are economically dilutive to the shareholders of the surviving Fund.

Section 312.03(b)(i) of the Manual requires listed issuers to obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to a director, officer or substantial security holder of the company (each a "Related Party") if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the

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[3] See SR-NYSE-2022-11 (February 23, 2022).

[4] Amendment No. 1 does not make any changes to the rule text as presented in Exhibit 5 of the original filing.

issuance. Section 312.03(b) affords an exception for cash sales that meet a market price test.

Section 312.03(b)(ii) of the Manual provides that shareholder approval is also required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, where such securities are issued as consideration in a transaction or series of related transactions in which a Related Party has a five percent or greater interest (or such persons collectively have a ten percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into common stock, could result in an issuance that exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

Section 312.03(b)(iii) of the Manual provides that any sale of stock to an employee, director or service provider is also subject to the equity compensation rules in Section 303A.08 of the Manual. For example, a sale of stock to any of such parties at a discount to the then market price would be treated as equity compensation under Section 303A.08 notwithstanding that shareholder approval may not be required under Sections 312.03(b) or 312.03(c).

Similarly, Section 312.03(c) of the Manual requires listed issuers to obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions if:

> **(1)** the common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or
> **(2)** the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock.

The Exchange proposes to exempt closed end management companies that are registered under the Investment Company Act of 1940 ("1940 Act")[5] (consisting of closed-end funds listed under Section 102.04.A. and business development companies listed under Section 102.04.B) (collectively, "Funds"), from having to comply with the shareholder approval requirement in Sections 312.03(b) and (c) in connection with the acquisition of the stock or assets of an affiliated registered

[5] 15 USC 80a-1.

investment company in a transaction that complies with Rule 17a-8 under the 1940 Act (Mergers of affiliated companies) ("Rule 17a-8")[6] and does not otherwise require shareholder approval under the 1940 Act or the rules thereunder or any other Exchange rule. As described below, the Exchange believes Rule 17a-8 provides protections that obviate the need for a shareholder approval requirement in these circumstances.

Sections 17(a)(1) and (2) of the 1940 Act prohibit, among other things, certain transactions between registered investment companies and affiliated persons. Rule 17a-8 provides an exemption from Sections 17(a)(1)-(2) of the 1940 Act for certain mergers of affiliated companies, provided, among other things, that the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company or of any other company or series participating in the transaction, must determine that (i) participation in the merger is in the best interests of its respective investment company, and (ii) the interests of the company's existing shareholders will not be diluted as a result of the transaction.[7] In addition, under Rule 17a-8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met.[8] Rule 17a-8 does not require the surviving company to obtain shareholder approval in connection with the merger of an affiliated company.

Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange believes the provisions of Rule 17a-8 protect against dilution and also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. The Exchange therefore believes that it is appropriate to exempt issuers of Funds from having to comply with the shareholder approval requirement in Section 312.03(c) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8, which can be both time consuming and expensive.

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6 17 CFR 270.17a-8.

7 See 15 U.S.C. 80a-17(a)(1)-(2). See also the definition of "affiliated person" in the 1940 Act, 15 U.S.C 80a-2(a)(3).

8 17 CFR 270.17a-8(a)(3).

Notwithstanding the proposed exemption, if other provisions of Exchange rules and the 1940 Act and the rules thereunder require shareholder approval, those would still apply. The Exchange also notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.[9]

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] 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.

The Exchange believes that the proposed amendment is consistent with the protection of investors, as protections afforded by Rule 17a-8 mean that (i) there is no risk of dilution to existing shareholders as a result of an issuance of shares by a Fund in connection with the acquisition of the stock or assets of an affiliated company, and (ii) there is a reduced risk of disenfranchisement of existing shareholders as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. Because the board of each merging company must make an affirmative determination that the transaction is in the best interest of its investment company and that the transaction will not result in dilution for existing shareholders, there is reduced concern the existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to registered investment companies that are organized under the 1940 Act. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. To the Exchange's knowledge, the shares of the surviving Fund in a merger of

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9 See Investment Company Act Release No. 25666, 67 FR 48511 (July 24, 2002) at n. 18).

10 15 U.S.C. 78f(b)(5).

affiliated Funds are generally issued at a price equal to the surviving Fund's net asset value, thereby ensuring that the transaction is not dilutive to the surviving Fund's shareholders. The Exchange understands that this exchange ratio is publicly disclosed in the proxy statement soliciting proxies from the acquired Fund's shareholders, as well as in other disclosure documents. As described above, if the shares in such a merger are issued at any price other than net asset value, in order to rely on Rule 17a-8, the board of directors of the surviving Fund would nonetheless be required to make an affirmative determination that such price was not dilutive to the interests of its existing shareholders. Consequently, the Exchange believes that the proposed exemption would not result in issuances that are dilutive to the shareholders of the surviving Fund.

The Exchange notes that while shareholders of the non-surviving company must approve the merger under certain circumstances, Rule 17a-8 does not require the shareholders of the surviving company to approve the transaction. Accordingly, the Exchange believes it is appropriate to exempt Funds from the requirements of Sections 312.03(b) and (c) in this same limited circumstance.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a Fund's organizational documents.

The Exchange believes it is not unfairly discriminatory to offer the exemption only to Funds completing a merger with an affiliated registered investment company, as opposed to all issuers, because the protections against dilution and self-dealing described herein are embedded in the 1940 Act and do not apply to those other issuers.[11]

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment would offer Funds a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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[11] The Exchange does not currently have any listed companies that are registered under the Investment Company Act other than closed-end funds and business development companies listed under Section 102.04.

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Proposed Rule Text

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSE-2022-11, Amendment No. 1)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend the NYSE Listed Company Manual to Provide a Limited Exemption from the Shareholder Approval Requirements

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on March 8, 2022, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 Section 312.03 of the NYSE Listed Company Manual ("Manual") to provide a limited exemption from the shareholder approval requirements of that rule for listed closed-end funds. 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.

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 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

Amendment No. 1

The Exchange has previously submitted to the SEC a proposal to amend Section 312.03 of the Manual to provide a limited exemption from the shareholder approval requirements of that rule for listed closed-end funds.[4] This Amendment No. 1 replaces and supersedes the original filing in its entirety.[5] This Amendment No. 1 is being filed to:

- make clarifications with respect to the description of the text of Section 312.03(b) of the Manual and Section 102.04 of the Manual;
- correct some typographical errors;

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4 See SR-NYSE-2022-11 (February 23, 2022).

5 Amendment No. 1 does not make any changes to the rule text as presented in Exhibit 5 of the original filing.

- clarify in the Statutory Basis section that there is a reduced risk of disenfranchisement of existing shareholders as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid, rather than stating that there is no risk of disenfranchisement at all; and
- replace a sentence in the Statutory Basis section of the Form 19b-4 that states that the interests of shareholders of the acquiring fund will not be diluted where the shares issued by the surviving fund are issued at a price equal to the surviving fund's net asset value. The deleted sentence is replaced with the following:

> To the Exchange's knowledge, the shares of the surviving Fund in a merger of affiliated Funds are generally issued at a price equal to the surviving Fund's net asset value, thereby ensuring that the transaction is not dilutive to the surviving Fund's shareholders. As described above, if the shares in such a merger are issued at any price other than net asset value, in order to rely on Rule 17a-8, the board of directors of the surviving Fund would have to make an affirmative determination that such price was not dilutive to the interests of its existing shareholders. Consequently, the Exchange believes that the proposed exemption would not result in issuances that are economically dilutive to the shareholders of the surviving Fund.

Section 312.03(b)(i) of the Manual requires listed issuers to obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or

exercisable for common stock, in any transaction or series of related transactions, to a director, officer or substantial security holder of the company (each a "Related Party") if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance. Section 312.03(b) affords an exception for cash sales that meet a market price test.

Section 312.03(b)(ii) of the Manual provides that shareholder approval is also required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, where such securities are issued as consideration in a transaction or series of related transactions in which a Related Party has a five percent or greater interest (or such persons collectively have a ten percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into common stock, could result in an issuance that exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

Section 312.03(b)(iii) of the Manual provides that any sale of stock to an employee, director or service provider is also subject to the equity compensation rules in Section 303A.08 of the Manual. For example, a sale of stock to any of such parties at a discount to the then market price would be treated as equity compensation under Section 303A.08 notwithstanding that shareholder approval may not be required under Sections 312.03(b) or 312.03(c).

Similarly, Section 312.03(c) of the Manual requires listed issuers to obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions if:

> **(1)** the common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or
>
> **(2)** the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock.

The Exchange proposes to exempt closed end management companies that are registered under the Investment Company Act of 1940 ("1940 Act")[6] (consisting of closed-end funds listed under Section 102.04.A. and business development companies listed under Section 102.04.B) (collectively, "Funds"), from having to comply with the shareholder approval requirement in Sections 312.03(b) and (c) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the 1940 Act (Mergers of affiliated companies) ("Rule 17a-8")[7] and does not otherwise require shareholder approval under the 1940 Act or the rules thereunder or any other Exchange rule. As described below, the

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[6] 15 USC 80a-1.

[7] 17 CFR 270.17a-8.

Exchange believes Rule 17a-8 provides protections that obviate the need for a shareholder approval requirement in these circumstances.

Sections 17(a)(1) and (2) of the 1940 Act prohibit, among other things, certain transactions between registered investment companies and affiliated persons. Rule 17a-8 provides an exemption from Sections 17(a)(1)-(2) of the 1940 Act for certain mergers of affiliated companies, provided, among other things, that the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company or of any other company or series participating in the transaction, must determine that (i) participation in the merger is in the best interests of its respective investment company, and (ii) the interests of the company's existing shareholders will not be diluted as a result of the transaction.[8] In addition, under Rule 17a-8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met.[9] Rule 17a-8 does not require the surviving company to obtain shareholder approval in connection with the merger of an affiliated company.

Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange believes the provisions of Rule 17a-8 protect against dilution and also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder

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[8] See 15 U.S.C. 80a-17(a)(1)-(2). See also the definition of "affiliated person" in the 1940 Act, 15 U.S.C 80a-2(a)(3).

[9] 17 CFR 270.17a-8(a)(3).

of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. The Exchange therefore believes that it is appropriate to exempt issuers of Funds from having to comply with the shareholder approval requirement in Section 312.03(c) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8, which can be both time consuming and expensive.

Notwithstanding the proposed exemption, if other provisions of Exchange rules and the 1940 Act and the rules thereunder require shareholder approval, those would still apply. The Exchange also notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] 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

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[10] See Investment Company Act Release No. 25666, 67 FR 48511 (July 24, 2002) at n. 18).

[11] 15 U.S.C. 78f(b)(5).

not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors, as protections afforded by Rule 17a-8 mean that (i) there is no risk of dilution to existing shareholders as a result of an issuance of shares by a Fund in connection with the acquisition of the stock or assets of an affiliated company, and (ii) there is a reduced risk of disenfranchisement of existing shareholders as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. Because the board of each merging company must make an affirmative determination that the transaction is in the best interest of its investment company and that the transaction will not result in dilution for existing shareholders, there is reduced concern the existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to registered investment companies that are organized under the 1940 Act. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. To the Exchange's knowledge, the shares of the surviving Fund in a merger of affiliated Funds are generally issued at a price equal to the surviving

Fund's net asset value, thereby ensuring that the transaction is not dilutive to the surviving Fund's shareholders. The Exchange understands that this exchange ratio is publicly disclosed in the proxy statement soliciting proxies from the acquired Fund's shareholders, as well as in other disclosure documents. As described above, if the shares in such a merger are issued at any price other than net asset value, in order to rely on Rule 17a-8, the board of directors of the surviving Fund would nonetheless be required to make an affirmative determination that such price was not dilutive to the interests of its existing shareholders. Consequently, the Exchange believes that the proposed exemption would not result in issuances that are dilutive to the shareholders of the surviving Fund.

The Exchange notes that while shareholders of the non-surviving company must approve the merger under certain circumstances, Rule 17a-8 does not require the shareholders of the surviving company to approve the transaction. Accordingly, the Exchange believes it is appropriate to exempt Funds from the requirements of Sections 312.03(b) and (c) in this same limited circumstance.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a Fund's organizational documents.

The Exchange believes it is not unfairly discriminatory to offer the exemption only to Funds completing a merger with an affiliated registered investment company, as

opposed to all issuers, because the protections against dilution and self-dealing described herein are embedded in the 1940 Act and do not apply to those other issuers.[12]

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment would offer Funds a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders.

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

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[12] The Exchange does not currently have any listed companies that are registered under the Investment Company Act other than closed-end funds and business development companies listed under Section 102.04.

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-2022-11, Amendment No. 1 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-2022-11, Amendment No. 1. 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-NYSE-2022-11, Amendment No. 1 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.[13]

Eduardo A. Aleman
Deputy Secretary

[13] 17 CFR 200.30-3(a)(12).

EXHIBIT 5
Added text underlined;
Deleted text in [brackets]

NYSE Listed Company Manual

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312.03 Shareholder Approval

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(e) Sections 312.03 (b), (c) and (d) shall not apply to issuances by limited partnerships.

(f) Closed-end management investment companies (including business development companies) with equity securities listed under Section 102.04 shall not be required to comply with Section 312.03(b) or (c) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act of 1940 and does not otherwise require shareholder approval under the Investment Company Act of 1940 and the rules thereunder or any other Exchange rule.

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