

SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Petition of:

The Council of Institutional Investors.

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) File No. SR-NYSE-2019-67
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MOTION TO LIFT STAY

The New York Stock Exchange LLC (“NYSE”) hereby moves the Securities and Exchange Commission to lift the automatic stay of the Commission’s August 26, 2020 Order (the “Order”)¹ that was triggered pursuant to Rule 431(e)² of the Commission’s Rule of Practice when the Council of Institutional Investors (“Petitioner”) filed its Notice of Intention to Petition for Review of the Order on August 31, 2020.

As explained in detail in NYSE’s supporting brief, the automatic stay substantially harms potential issuers who otherwise could and would access the public capital markets through Primary Direct Floor Listings, which are authorized by the rule changes (the “Rule Changes”) that the Order approved, as well as the investors who would invest in those companies. By preventing such direct listings from proceeding, the automatic stay may entirely deny certain issuers an opportunity to raise required capital during the limited Fall 2020 public offering period—a potentially irreparable injury in light of currently volatile market conditions and an uncertain economic outlook. By contrast, none of the factors that the Commission considers when evaluating stays supports maintaining the automatic stay in these circumstances. Petitioner

¹ Order Approving Proposed Rule Change as Modified, Securities Exchange Act Release No. 89684, File No. SR-NYSE-2019-67 (Aug. 26, 2020), 85 FR 54454 (Sept. 1, 2020) (the “Order”).

² 17 C.F.R § 201.431(e).

cannot show any strong or substantial likelihood of success on the merits of its petition. The Order reflects the extensive review and careful analysis of the Division of Trading and Markets (the “Division”), which approved the Order pursuant to delegated authority. The Order followed a lengthy public comment period, in which Petitioner actively participated, and as reflected in the Order, the Division fully considered and rejected Petitioner’s objections to the Rule Changes during that process. Further, Petitioner and its members will suffer no imminent, irreparable harm if the Commission lifts the automatic stay and the Rule Changes take effect. The only purported harms Petitioner identified are generic, speculative concerns that do not specifically relate to direct listings or flow from the Rule Changes. Lifting the stay, moreover, would not prevent the Commission from reviewing the Order, should it believe such review is warranted.

Wherefore, NYSE prays for an order of the Commission promptly lifting the automatic stay of the August 26, 2020 Order.

Dated: September 4, 2020
New York, New York

DAVIS POLK & WARDWELL LLP

By:



Paul S. Mishkin
Joseph A. Hall
Marcel Fausten
Daniel J. Schwartz
Lindsay Schare
450 Lexington Avenue
New York, NY 10017
(212) 450-4000
paul.mishkin@davispolk.com
joseph.hall@davispolk.com
marcel.fausten@davispolk.com
daniel.schwartz@davispolk.com
lindsay.schare@davispolk.com

Attorneys for the New York Stock Exchange LLC

CERTIFICATE OF SERVICE

I, Paul S. Mishkin, counsel to the New York Stock Exchange LLC (“NYSE”), hereby certify that on September 4, 2020, I caused to be served copies of the attached Motion to Lift Stay by way of Federal Express Overnight Courier, hand courier, and email on the Council of Institutional Investors, and sent the original and three copies of the same by Federal Express Overnight Courier and email to the Secretary at the following addresses:

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090
Email: apfilings@sec.gov

Jeffrey P. Mahoney
General Counsel
Council of Institutional Investors
1717 Pennsylvania Avenue, Suite 350
Washington, DC 20006
Email: jeff@cii.org

Dated: September 4, 2020
New York, New York



Paul S. Mishkin
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000
paul.mishkin@davispolk.com