

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94075; File No. SR-NYSE-2022-03)

January 27, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Listing Standard for Rights

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 January 13, 2022, New York Stock Exchange LLC (“NYSE” or the “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 adopt a listing standard for rights. 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Listed companies sometimes seek to raise capital from their existing shareholders by granting rights to subscribe for additional shares of the issuer’s listed securities to all shareholders of record. The issuer may elect to make its rights either transferrable or non-transferable and may wish to have transferrable rights traded on the Exchange. Historically, the Exchange has traded short-term rights (i.e., rights with a subscription period of less than 90 days) pursuant to Section 703.03 of the NYSE Listed Company Manual (“Manual”) on an unlisted basis.⁴

While Section 703.03 provides for the unlisted trading of short-term rights, it does not enable the issuer to list such rights on the Exchange. Nor does the Manual currently provide any mechanism for the trading or listing of rights with a life of 90 days or longer. The Exchange proposes to amend Section 703.12 of the Manual, which currently provides for the listing of warrants, to create a proposed Part (II) of that rule. Part (I) of Section 703.12, as amended, would consist of the current warrant listing provisions, while proposed Part (II) would set forth new listing requirements for rights.⁵

For purposes of proposed Section 703.12(II), the term "rights" refers to the privilege

⁴ When trading unlisted short-term rights under Section 703.03 of the Manual, the Exchange relies on the exemption from Exchange Act Section 12(a) registration requirements provided under Exchange Act Rule 12a-4.

⁵ The Exchange proposes to change a reference in Part (I) of Section 703.12 from “Para. 312.00” to “Section 312.00” to conform to references elsewhere within the rule.

offered to holders of record of issued equity securities to subscribe (usually on a pro rata basis) for additional securities of the same class.

Under proposed Section 703.12(II), to be listed on the Exchange, rights must be issued to purchase or receive a security that is already listed on the Exchange or that will be listed concurrent with the rights. The rights holders would not be entitled to any privileges of the holders of common stock (e.g., dividends, preemptive rights, or voting rights). If the rights are exercisable into listed common stock, the listing of the rights and the underlying common stock would be subject to the NYSE shareholder approval policy as set forth in Section 312.00 of the Manual.

For initial listing, rights would need to meet the following requirements under proposed Section 703.12(II):

- (1) At least 400,000 issued;
- (2) The underlying security must be listed on the Exchange; and
- (3) At least 100 public holders of round lots.

The proposed rule would state that, for purposes of such rule, “public holders” excludes holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10 percent or more of the company’s total outstanding shares.

The Exchange notes that the numerical requirements set forth above are identical to those included in Nasdaq’s rule for the listing of rights on Nasdaq Capital Market.⁶ The Exchange also notes that the Nasdaq listing provisions for rights would currently enable an NYSE-listed company to list its rights on Nasdaq, while such a company would not currently be able to list its rights on the NYSE.

⁶ See Nasdaq Marketplace Rule 5515.

Proposed Section 703.12(II) would provide that the continued listing of rights is contingent on the underlying security remaining listed on the Exchange. If the security underlying a listed right ceased to be listed on the Exchange, the Exchange would promptly initiate suspension and delisting procedures with respect to the listed rights.⁷ In such case, the issuer of the listed rights would not be eligible to avail itself of the provisions of Sections 802.02 and 802.03, and any such listed rights would be subject to delisting procedures as set forth in Section 804.00.

The proposed listing standard would note that the general instructions for preparation and filing of a listing application are described in Section 703.01. The proposed listing standard would also note that the form of listing application and information regarding supporting documents required in connection with the listing of rights are available on the Exchange's website or from the Exchange upon request.

The Exchange notes that its proposed listing standards for rights differ from the those of Nasdaq Capital Market in two respects:

First, Nasdaq Marketplace Rules 5515 and 5560 require, respectively, a listed right to have at least three registered and active market makers at the time of initial listing and a continued listing requirement to have at least two registered and active market makers, one of which may be a market maker entering a stabilizing bid. The Exchange has not included these requirements, as they are not applicable to our market model, in which the rights would be allocated to a Designated Market Maker for trading.

Second, the applicable Nasdaq Capital Market rules provide that a right may be listed if

⁷ Specifically, the Exchange would immediately suspend trading in the rights upon delisting of the underlying security and would not trade the rights pending completion of any appeal by the issuer.

the underlying security is listed on Nasdaq or is a Covered Security and will be subject to delisting if that ceases to be the case. The Exchange's proposal provides that rights may only be listed as an initial matter (and remain listed) if the underlying security is listed on the NYSE and not if it is a Covered Security. The Exchange has taken this approach to be consistent with its existing requirements for the listing of warrants and also because Covered Securities listed on other exchanges are subject to lower initial and continued listing standards than are applicable to NYSE listed securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act") generally.⁸ Section 6(b)(5)⁹ requires, among other things, that exchange rules are 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the public interest and the interests of investors, promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers.

The Exchange believes that the proposal is designed to protect the public interest and the interests of investors, by providing a listed trading market for the shareholders of NYSE listed companies who receive transferable rights from the issuer and who would otherwise not have the ability to list the rights on the same exchange as the underlying securities.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

The Exchange notes that the requirements of the proposed rule are identical to those for the listing of rights on Nasdaq Capital Market as set forth in Sections 5515 and 5560 of the Nasdaq Marketplace rules, with the exception of the provisions described above with respect to market makers and the ability to list rights where the underlying security is a Covered Security not listed on the exchange listing the rights. The Exchange believes that these differences are consistent with the protection of investors and the public interest because: (i) the market maker requirement is irrelevant to the NYSE market model, in which the rights will be allocated to a Designated Market Maker for trading; and (ii) as other exchanges have continued listing standards for equity securities that are less stringent than those of the NYSE, the approach of excluding rights with respect to Covered Securities listed on other markets ensures that rights can only be listed with respect to underlying securities that are qualified for listing on the NYSE. Furthermore, the Exchange believes that it is not unfairly discriminatory to limit the listing of rights to those with respect to NYSE listed equities, as the purpose is not to discriminate among issuers, but rather to enhance investor protection by ensuring that rights can only be listed if the underlying security meets the more stringent continued listing standards applied by the NYSE.

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

The Exchange does not believe that the proposal would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. There would be no burden on competition among companies listed on the NYSE, as all NYSE-listed companies would be able to list their rights under the same rule provisions. Similarly, the proposed rule would not impose any burden on intermarket competition, as any rights that could be listed under the proposed rule would also be eligible for listing on Nasdaq. The Exchange believes the proposal enhances competition for listing by providing issuers with a choice of

listing venues between the NYSE and Nasdaq when they list their rights. The Exchange believes that limiting the listing of rights to those with respect to NYSE listed equities does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as the purpose is not to discriminate among issuers, but rather to enhance investor protection by ensuring that rights can only be listed if the underlying security meets the more stringent continued listing standards applied by the NYSE.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹² normally does not become operative for 30 days after the date of its filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to list rights that would qualify for listing under the proposed rule prior to the expiration of the 30-day operative delay. The Exchange states that such waiver would be consistent with the protection of investors and the public interest because the proposed rule change is substantially similar to the rules of another national securities exchange.¹⁴ For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁵

At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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:

¹⁴ See supra note 6, and accompanying text.

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

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-2022-03 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-2022-03. 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-2022-03, 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).