

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100585; File No. SR-NYSE-2024-21)

July 24, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Section 802.01D of the NYSE Listed Company Manual Concerning the Suspension and Delisting of a Listed Company that has Changed its Primary Business Focus

I. Introduction

On April 4, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to permit the suspension and delisting of a listed company that has changed its primary business focus. On April 17, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on April 25, 2024.⁴ On June 6, 2024, the Commission designated a longer period for Commission action on the proposed rule change.⁵ On July 17, 2024, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the original filing, as modified Amendment No. 1, in its entirety.⁶ The Commission has received no

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The full text of Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nyse-2024-21/srnyse202421.htm>.

⁴ See Securities Exchange Act Release No. 99992 (April 19, 2024), 89 FR 31783 (“Notice”).

⁵ See Securities Exchange Act Release No. 100293 (June 6, 2024), 89 FR 49926 (June 12, 2024) (extending the time period for Commission action to July 24, 2024).

⁶ In Amendment No. 2, the Exchange revised the proposal to: (i) include a requirement that any company that undertakes a change in its primary business focus must promptly provide notice of such change in

comment letters on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2⁷

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

SR-NYSE-2024-21 was originally filed on April 4, 2024. On April 17, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on April 25, 2024.⁸ This Amendment No. 2 to SR-NYSE-2024-21 replaces and supersedes the original filing as modified by Amendment No. 1 in its entirety.⁹ Amendment No. 2 amends Amendment No. 1 to: (i)

writing to the Exchange; (ii) amend the proposed rule text in relation to the additional factors the Exchange will consider to delete the phrase indicating that the Exchange will consider those additional factors "where appropriate"; (iii) provide an explanation of why the Exchange will consider such additional factors; (iv) state that the Exchange will undertake its continued listing analysis regardless of whether the listed company provides the required notification to the Exchange; and (v) conform Form 19b-4 to the changes being made to the proposed rule text. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nyse-2024-21/srnyse202421.htm>.

⁷ This Section II reproduces Amendment No. 2, as filed by the Exchange.

⁸ See Securities Exchange Act Release No. 99992 (April 19, 2024), 89 FR 31783.

⁹ See SR-NYSE-2024-21 (April 4, 2024).

amend the proposed rule text to include a requirement that any company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange; (ii) amend the proposed rule text in relation to the additional factors the Exchange will consider to delete the phrase indicating that the Exchange will consider those additional factors “where appropriate”; (iii) amend the Purpose section of the filing to provide an explanation of why the Exchange will consider such additional factors; (iv) amend the Purpose section to note that the Exchange will undertake its continued listing analysis regardless of whether the listed company provides the required notification to the Exchange; and (v) amend the Purpose section to conform it to the changes being made to the proposed rule text.

It has been the Exchange’s experience that listed companies occasionally change the focus of their operations from the business they were engaged in at the time of initial listing to a business line that is completely unrelated or that was not material at the time of its original listing. The Exchange is concerned that, in such circumstances, investors who acquired the company’s stock prior to this change in operations (including, in many cases, in connection with the company’s initial public offering) may have made their investment decision based on the company’s disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, a wholesale change in business operations may give rise to a concern about the suitability for listing of the company had it been engaged in that line of business at the time of its application for listing. The Exchange notes that, in some circumstances, there has been significant downward price

movement subsequent to such a change in business focus, which resulted in significant investor losses and an inability to meet exchange continued listing standards.¹⁰

In light of the foregoing, the Exchange proposes to amend Section 802.01D of the Manual (“Other Criteria”) to include a new paragraph (“Change in Primary Business Focus”) providing that the Exchange may in its sole discretion subject a listed company to immediate suspension and delisting in accordance with the procedures set forth in Section 804.00 of the Manual if that listed company has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The proposed rule text provides that any company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange. The Exchange will undertake the continued listing analysis and potentially take delisting action under the proposed provision regardless of whether the listed company complies with its obligation to provide written notification to the Exchange.

Upon becoming aware of such a change in the company’s primary business focus, by notification from the listed company or otherwise, the Exchange’s Staff would conduct a thorough assessment of the company’s suitability for continued listing in light of such change. The Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company’s suitability for listing and will not entail an application of the quantitative standards for initial

¹⁰ For example, Bit Brother, a company listed on Nasdaq, initially focused on selling tea products but ultimately changed its business line to crypto. After three reverse splits, one of which was quite large (1000:1), the company was still unable to regain sustained compliance with listing standards. The stock was delisted from Nasdaq in February 2024. See <https://www.wsj.com/finance/stocks/as-trading-frenzies-grip-penny-stocks-criticism-of-nasdaq-grows-8bd4118b> (Feb 23, 2024).

listing. In conducting this analysis, the Exchange would take into consideration other changes that may have occurred in connection with the change in the company's primary business focus, including in all cases, but not limited to, any changes in the management, board of directors, voting power, ownership, and financial structure of the company. The Exchange notes that the additional factors enumerated in the proposed rule text are consistent with areas that would be part of any initial listing review and are therefore a necessary part of any consideration of whether the company would have been suitable for initial listing in the form it took after its change of primary business focus.

The Exchange acknowledges that seeking to suspend and delist a company's stock under this revised rule would be an extraordinary action. The Exchange therefore anticipates seldom relying on this new discretionary authority, and only after thorough analysis of all relevant facts and circumstances.

The lead-in to Section 802.01D provides that if any of the factors set forth in 802.01D apply to a listed company, the Exchange may in its sole discretion subject the company to the procedures outlined in Paras. 802.02 and 802.03, which provide noncompliant companies with an opportunity to cure their deficiencies. The Exchange proposes to add a parenthetical to this lead-in language to specify that, instead of applying the procedures outlined in Paras. 802.02 and 802.03, the Exchange will instead commence immediate suspension and delisting procedures if the individual paragraph of Section 802.01D so specifies). This proposed parenthetical provision in the lead-in to Section 802.01D will make the lead-in consistent with the Exchange's proposal to include a provision in the proposed new paragraph of that rule providing that any listed company that is deemed to be unsuitable for continued listing because of a change of business operations will be subject to immediate suspension and delisting procedures.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, 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 it is consistent with the protection of investors to amend Section 802.01D to provide the Exchange with the discretion to immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual with respect to a listed company that has changed its primary business focus to a new area of business that it was not engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The Exchange notes that investors who acquired the company's stock prior to this change in operations (including, in many cases, in connection with the company's initial public offering) may have made their investment decision based on the company's disclosure about its original business and might not have made their investment if they had been aware of how the company would change. In addition, the Exchange is concerned that a listed company may change its business operations to a line of business that would have given rise to a concern about the suitability for listing of the company had it been engaged in that line of

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

business at the time of its application for listing. The Exchange notes that taking delisting action in such cases would be discretionary and that the Exchange would undertake such action only after a careful analysis of the company's suitability for continued listing, taking into account all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the company. In making these determinations, the Exchange would focus its analysis on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing. The Exchange notes that this analysis will focus on the qualitative aspects of the company's suitability for listing and will not entail an application of the quantitative standards for initial listing. The Exchange believes that the proposed requirement that any listed company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange will enable the Exchange to more systematically identify circumstances where it is necessary to consider the appropriateness for continued listing of such companies.

The proposed inclusion of new parenthetical language in the lead-in to Section 802.01D makes that lead-in consistent with the proposed new paragraph with respect to a company's change in business, as it provides that the Exchange can immediately suspend and delist a company under Section 802.01D where the applicable paragraph of the rule so provides, as is the case with the proposed new provision with respect to changes in business operations.

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 Exchange notes that there are several listing venues and that any company that the Exchange

deemed unsuitable for continued listing under the proposed rule could apply for listing on one or more other exchanges.

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. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be 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 investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.

¹³ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(7).

The development and enforcement of meaningful listing standards for a national securities exchange is of critical importance to financial markets and the investing public.¹⁶ Meaningful listing standards are especially important given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities, and the role of an exchange in overseeing its market and ensuring compliance with its listing standards.¹⁷

As described above, the Exchange proposes to amend Section 802.01D to be able to immediately commence suspension and delisting procedures in accordance with Section 804.00 of the Manual with respect to a listed company that it determines to be unsuitable for continued listing due to a change in its primary business focus to a new area of business that is substantially different from the business it was engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. According to the Exchange, it is concerned that some investors may have made their investment decision in a listed company based on the company's disclosures about its original business and might not have made their investment if they had been aware of how the company would change its business focus.¹⁸ The

¹⁶ See e.g., Securities Exchange Act Release Nos. 99238 (Dec. 26, 2023), 89 FR 113, 116 (Jan. 2, 2024) (SR-NYSE-2023-34) and 81856, (Oct. 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR-NYSE-2017-31). Among other things, the Commission has stated that listing standards provide the means for an exchange to screen issuers that seek to become listed, and to provide listed status only to those that are bona fide companies and that have or will have sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. See e.g., Securities Exchange Act Release No. 93256 (Oct. 4, 2021), 86 FR 56338, 56342 (Oct. 8, 2021) (“SR-NASDAQ-2021-007 Approval Order”).

¹⁷ See SR-NASDAQ-2021-007 Approval Order at id. The Commission has also stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See SR-NASDAQ-2021-007 Approval Order, id. at 56342 note 59.

¹⁸ See Notice, supra note 4 at 31784. The Exchange notes that, in some circumstances, there has been significant downward price movement subsequent to a company's change in business focus, which resulted in significant investor losses and an inability to meet exchange continued listing standards. Id. See also, supra note 10 and accompanying text. As a result, primary business focus changes of a listed company can potentially impact the Exchanges ability to maintain fair and orderly markets.

Exchange further states in support of its proposal that changes in a company's primary business focus can raise concerns about the company's suitability for continued listing because it may not have approved initial listing of the company's security based on the changed business focus had it been in place at the time of application for initial listing.¹⁹ The Commission believes that the Exchange's proposal will help to address these concerns and further the protection of investors and the public interest, consistent with Section 6(b)(5) of the Act, by ensuring that a listed company that has substantially changed its primary business focus from when it was originally listed will be reviewed for continued listing under the new standard.

The Commission also believes that the proposed notice requirement for any company that has changed its primary business focus to a new area of business that is substantially different from the business it was engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing will allow the Exchange to more efficiently identify for review those companies that may no longer be suitable for continued listing. While the Commission expects listed companies to comply with the written notification requirement,²⁰ if the Exchange becomes aware of a change in a company's primary business focus by means other than a company's written notification, the Commission would expect the Exchange to do a review of a company under the new rule irrespective of how the change came to its attention. In this regard, the Exchange stated that it would conduct a thorough assessment of a company's suitability for continued listing upon becoming aware of a change in the company's primary business focus by notification or otherwise.²¹

¹⁹ See Notice, supra note 4 at 31784.

²⁰ Listed companies who would meet the requirements to provide written notification to the Exchange under the new provision but do not do so would be considered non-compliant with the notification requirement.

²¹ See Notice, supra note 4 at 31784.

The Commission also believes that the Exchange’s discretion to initiate suspension and delisting procedures for a company that has substantially changed its primary business focus has been reasonably tailored to allow the Exchange to be able to distinguish the more significant instances of business purpose change that would raise concerns about continued listing and which could, depending on the circumstances, negatively impact the company’s financial strength and outlook.²² In particular, the proposed rule states that the Exchange will focus its analysis of the company’s suitability for continued listing on whether it would have accepted the listed company for initial listing if it had been engaged in its modified business at the time of original listing.²³ In conducting this analysis, the proposed rule also specifies certain criteria that the Exchange will consider in assessing a company’s suitability for continued listing, such as changes in the management, board of directors, voting power, ownership, and financial structure of the company.²⁴ The Exchange notes that these additional factors are consistent with areas that would be part of any initial listing review and that changes in these areas may have occurred in connection with changes in a company’s primary business focus that should be considered by the Exchange.²⁵ Moreover, the Exchange acknowledges that seeking to suspend and delist a company’s stock under this revised rule would be an extraordinary action.²⁶ The Commission

²² See id.

²³ See id. As discussed above, the review of a company under the new standard is based on the Exchange’s assessment of the company’s suitability for continued listing given the change in its primary business focus. Continued listing quantitative standards will continue to apply to a company that is being reviewed under the new standard just as with any company already listed on the Exchange. See id.

²⁴ See proposed Section 801.01D.

²⁵ See Amendment No. 2, supra note 6 at 5.

²⁶ See Notice, supra note 4 at 31784.

expects that the Exchange will therefore carefully utilize this new authority, and, as the Exchange states, only after a thorough analysis of all relevant facts and circumstances.²⁷

Finally, the Commission also notes that a company that is subject to suspension and delisting under this new provision would be entitled to a review of the delisting determination under the procedures set forth in Section 804.00 of the Manual. The Commission believes that this will provide, consistent with Section 6(b)(7) of the Act, a fair procedure for review of a suspension and delisting of a company under the new provision.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-21 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-2024-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

²⁷ See id.

comments on the Commission’s internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-21 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁸ to approve the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of Amendment No. 2 in the Federal Register. As discussed above, in Amendment No. 2, the Exchange revised the proposal to: (i) include a requirement that any company that undertakes a change in its primary business focus must promptly provide notice of such change in writing to the Exchange; (ii) amend the proposed rule text in relation to the additional factors the Exchange will consider to delete the phrase indicating that the Exchange will consider those

²⁸ 15 U.S.C. 78f(b)(2).

additional factors “where appropriate”; (iii) provide an explanation of why the Exchange will consider such additional factors; (iv) state that the Exchange will undertake its continued listing analysis regardless of whether the listed company provides the required notification to the Exchange; and (v) amend the Form 19b-4 to conform it to the changes being made to the proposed rule text. The Commission believes that these revisions strengthen the proposal and provide greater clarity on the application of the proposal and its scope, and the Exchange’s review of a company that has changed its primary business focus to a new area of business that is substantially different from the business it was engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing. The additional explanation in support of the proposal as well as the amended rule language in Amendment No. 2 assist the Commission in evaluating the Exchange’s proposal and in determining that it is consistent with the Act.

Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²⁹ that the proposed rule change (SR-NYSE-2024-21), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,

Assistant Secretary.

²⁹ Id.

³⁰ 17 CFR 200.30-3(a)(12).