

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100918; File No. SR-NYSE-2024-47)

September 4, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Section 102.01 of the NYSE Listed Company Manual to Provide that the Distribution Standard therein Will Be Calculated on a Worldwide Basis

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 22, 2024, 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 102.01 of the NYSE Listed Company Manual to provide that the distribution standard therein will be calculated on a worldwide basis. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Section 102.01A of the Manual sets forth the Exchange's minimum initial listing requirements with respect to distribution for companies seeking to list under the Exchange's “domestic” initial listing standards. A note included in Section 102.01B (under the heading “Calculations under the Distribution Criteria”) provides that, when considering a listing application from a company organized under the laws of Canada, Mexico or the United States (“North America”), the Exchange will include all North American holders and North American trading volume in applying the minimum stockholder and trading volume requirements of Section 102.01A.

Notwithstanding the foregoing, the note included in Section 102.01B also provides that, in connection with the listing of any issuer from outside North America, the Exchange will have the discretion, but will not be required, to consider holders and trading volume in the company’s home country market or primary trading market outside the United States in determining whether a company is qualified for listing under Section 102.01, provided such market is a regulated stock exchange. The note specifies that, in exercising this discretion, the Exchange would consider all relevant factors including: (i) whether the information was derived from a reliable source, preferably either a regulated securities market or a transfer agent that was subject to governmental regulation; (ii) whether there existed efficient mechanisms for the transfer of securities between the company’s non-U.S. trading market and the United States; and (iii) the

number of shareholders and the extent of trading in the company's securities in the United States prior to the listing.

The Exchange proposes to amend the note in Section 102.01B under the heading "Calculations under the Distribution Criteria" to provide that, when considering a listing application from a company regardless of whether the company is domestic or foreign, the Exchange will include all holders on a global basis and worldwide trading volume in applying the minimum stockholder and trading volume requirements of Section 102.01A. As the discretion provided with respect to the inclusion of non-U.S. holders and trading volume in the current rule would no longer be relevant if there was no geographic limitation on the inclusion of holders or trading volume in meeting the standards, the Exchange proposes to delete from the note the discussion of how that discretion is currently applied.

It has been the Exchange's experience in recent years that non-U.S. companies conducting their initial public offerings in the United States will often seek to sell a significant portion of the offering in the company's home market rather than in the United States. Such companies and their underwriters have sometimes had difficulty placing shares with a sufficient number of investors in North America to meet the Exchange's domestic distribution standards and, in some instances, companies have been unable to list on the Exchange because of the restrictions imposed by the current NYSE rule. In some cases, this means that these companies are lost to the U.S. capital markets, but in other cases these companies are able to list on the Nasdaq Stock Market ("Nasdaq"), as Nasdaq's distribution requirements do not include a limitation comparable to that included in the NYSE's rule. The Exchange believes that the proposed rule change will enable it to compete more effectively for the listing of non-U.S.

companies, as the rule change would remove a significant competitive disadvantage faced by the Exchange in competing with Nasdaq for the listing of these companies.

In addition to the competitive benefits described above, the Exchange believes that the current rule reflects an understanding of the functioning of the trading market for non-U.S. companies that is inconsistent with the current reality. The current restrictions have been in place for many years and do not reflect the speed and reliability of links among global securities markets. Given the ease of transfer of securities between different countries in the contemporary securities markets, there is no reason why the holders of a listed company's securities outside of North America cannot be active real time participants in the trading market in the United States and that foreign holders should be viewed as less valuable as a source of liquidity in that market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵ in particular, because it is 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 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5) in that it will promote competition for the listing of non-U.S. companies by ensuring that

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

the listing rules of the major listing exchanges will function the same in their consideration of shareholders and trading volume outside of North America for purposes of initial listing requirements. In addition to these competitive benefits, the Exchange believes that the current rule reflects an understanding of how the trading market for non-U.S. companies functions that is inconsistent with the current reality. The current restrictions have been in place for many years and do not reflect the speed and reliability of links among global securities markets. Given the ease of transfer of securities between different countries in the contemporary securities markets, there is no reason why the holders of a listed company's securities outside of North America cannot be active real time participants in the trading market in the United States and that foreign holders should be viewed as less valuable as a source of liquidity in that market. As such, the Exchange believes that the proposal is consistent with the protection of investors as it reflects appropriately the role played by shareholders and trading activity in a company's home market in the development of a liquid trading market in the United States in the securities of non-U.S. listed companies.

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.⁶

The Exchange believes that the proposal will not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is designed to increase the competition for listing of non-U.S. companies by enabling the Exchange to compete more effectively with Nasdaq for the listing of

⁶ 15 U.S.C. 78f(b)(8).

those companies, by conforming the Exchange's treatment of shareholders and trading volume outside North America with their treatment under Nasdaq listing rules.

The Exchange does not believe that the proposed rule change imposes a burden on intra-market competition because the provisions will be applied in the same manner to all listing applicants.

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 within such longer period 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

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number

SR-NYSE-2024-47 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-2024-47. 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 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-2024-47 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Vanessa A. Countryman,
Secretary.

⁷ 17 CFR 200.30-3(a)(12).