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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82627; File No. SR-NYSE-2017-30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, to Amend Section 102.01B of the NYSE Listed Company Manual to Provide for the Listing of Companies that List Without a Prior Exchange Act Registration and that Are Not Listing in Connection with an Underwritten Initial Public Offering and Related Changes to Rules 15, 104, and 123D

February 2, 2018

I. Introduction

On June 13, 2017, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Exchange Act")[2] and Rule 19b-4 thereunder,[3] a proposed rule change to amend Section 102.01B of the NYSE Listed Company Manual to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration in connection with an underwritten initial public offering and amend Exchange rules to address the opening procedures on the first day of trading of such securities. The proposal, as modified by Amendment No. 3, would: (i) eliminate the requirement in Footnote (E) of Section 102.01B ("Footnote (E)") of the Manual to have a private placement market trading price if there

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

is a valuation from an independent third-party of $250 million in market value of publicly-held shares; (ii) set forth several factors indicating when the independent third party providing the valuation would not be deemed "independent" under Footnote (E); (iii) amend NYSE Rule 15 to add a reference price for when a security is listed under Footnote (E); (iv) amend NYSE Rule 104 to specify Designated Market Maker ("DMM") requirements when facilitating the opening of a security listed under Footnote (E) when there has been no sustained history of trading in a private placement trading market for such security; and (v) amend NYSE Rule 123D to specify that the Exchange may declare a regulatory halt prior to opening a security that is the subject of an initial pricing upon Exchange listing and that has not, immediately prior to such initial pricing, traded on another national securities exchange or in the over-the-counter market.

The proposed rule change was published for comment in the Federal Register on June 20, 2017.[4] The Commission received one comment in response to the Original Notice.[5] The Exchange filed Amendment No. 1 to the proposed rule change on July 28, 2017, which, as noted below, was later withdrawn. On August 3, 2017, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to September 18, 2017.[6]

On August 16, 2017, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change, which superseded and replaced the proposed rule change in its

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4 See Securities Exchange Act Release No. 80933 (June 15, 2017), 82 FR 28200 (June 20, 2017) ("Original Notice").

5 See letter to the Commission from James J. Angel, Ph.D., CFA, Georgetown University, dated July 28, 2017 ("Angel Letter").

6 See Securities Exchange Act Release No. 81309 (August 3, 2017), 82 FR 37244 (August 9, 2017).

entirety.[7] The Commission published Amendment No. 2 for comment in the Federal Register on August 24, 2017.[8] The Commission received no comments in response to this solicitation for comments. On September 15, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.[9] Following the Order Instituting Proceedings, the Commission received one additional comment letter.[10] On December 8, 2017, the Exchange filed Amendment No. 3 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety.[11] On December 14, 2017, the Commission extended the time period for approving or disapproving the proposal for an additional 60 days until February 15, 2018.[12] The Commission is publishing this notice to solicit comment on Amendment No. 3 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

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7 See Notice, infra note 8, at n. 8, which describe the changes proposed in Amendment No. 2 from the original proposal.

8 See Securities Exchange Act Release No. 81440 (August 18, 2017), 82 FR 40183 (August 24, 2017) ("Notice").

9 See Securities Exchange Act Release No. 81640 (September 15, 2017), 82 FR 44229 (September 21, 2017) ("Order Instituting Proceedings").

10 See letter to Brent J. Fields, Commission, from Cleary Gottlieb Steen & Hamilton LLP, dated October 12, 2017 ("Cleary Gottlieb Letter").

11 Amendment No. 3 revised the proposal to eliminate the proposed changes to Footnote (E) that would have allowed a company to list immediately upon effectiveness of an Exchange Act registration statement only, without any concurrent IPO or Securities Act of 1933 ("Securities Act") registration. Except for removing this part of the proposal, the remaining proposed amendments in Amendment No. 3 are identical to those noticed for comment in Amendment No. 2. Amendment No. 3 also contained a complete restated Form 19b-4 under the Exchange Act, which contained the same discussions, statutory basis and other sections set forth in Amendment No. 2, with slight modifications to take into account the deleted provision. Amendment No. 3 is available at: https://www.sec.gov/comments/sr-nyse-2017-30/nyse201730-2782322-161654.pdf.

12 See Securities Exchange Act Release No. 82332 (December 14, 2017), 82 FR 60442 (December 20, 2017).

II. Description of the Proposed Rule Change, as Modified by Amendment No. 3

1. Listing Standards

Generally, Section 102 of the Manual sets forth the minimum numerical standards for domestic companies, or foreign private issuers that choose to follow the domestic standards, to list equity securities on the Exchange. Section 102.01B of the Manual requires a listed company to demonstrate at the time of listing an aggregate market value of publicly-held shares of either $40 million or $100 million, depending on the type of listing.[13] Section 102.01B also states that, in these cases, the Exchange relies on written representations from the underwriter, investment banker, or other financial advisor, as applicable, with respect to this valuation.[14] While Footnote (E) states that the Exchange generally expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off, Section 102.01B of the Manual also contemplates that companies that have not previously had their common equity securities registered under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list their common equity securities on the

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[13] Section 102.01B of the Manual states that a company must demonstrate "an aggregate market value of publicly-held shares of $40,000,000 for companies that list either at the time of their initial public offerings ("IPO") (C) or as a result of spin-offs or under the Affiliated Company standard or, for companies that list at the time of their Initial Firm Commitment Underwritten Public Offering (C), and $100,000,000 for other companies (D)(E)." Section 102.01B also requires a company to have a closing price, or if listing in connection with an IPO or Initial Firm Commitment Underwritten Public Offering, an IPO or Initial Firm Commitment Underwritten Public Offering price per share of at least $4.00 at the time of initial listing.

[14] See Section 102.01B, Footnote (C) of the Manual, which states that for companies listing at the time of their IPO or Initial Firm Commitment Underwritten Public Offering, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering. For spin-offs, the Exchange will rely on a representation from the parent company's investment banker (or other financial advisor) in order to estimate the market value based upon the distribution ratio.

Exchange at the time of effectiveness of a registration statement[15] filed solely for the purpose of allowing existing shareholders to sell their shares.[16] Specifically, Footnote (E) permits the Exchange, on a case by case basis, to exercise discretion to list such companies and provides that the Exchange will determine that such a company has met the $100 million aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (a "Valuation")[17] of the company and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market").[18] Under the current rules, the Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market.[19]

The Exchange proposed two changes to Footnote (E). First, the Exchange proposed to amend Footnote (E) to provide that, in the absence of any recent trading in a Private Placement Market, the Exchange will determine that a company has met its market value of publicly-held shares requirement if the company provides a recent Valuation evidencing a market value of

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15 The reference to a registration statement refers to a registration statement effective under the Securities Act.

16 See Section 102.01B, Footnote (E) of the Manual.

17 See Section 102.01B, Footnote (E) of the Manual, which sets forth specific requirements for the Valuation. Among other factors, any Valuation used for purposes of Footnote (E) must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations.

18 Section 102.01B, Footnote (E) of the Manual also sets forth specific factors for relying on a Private Placement Market price, and states that the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on such market if it is "consistent with a sustained history [of trading] over that several month period."

19 See Section 102.01B, Footnote (E) of the Manual.

publicly-held shares of at least $250 million.[20] In proposing this change, the Exchange expressed the view that the current requirement of Footnote (E) to rely on recent Private Placement Market trading in addition to a Valuation may cause difficulties for certain companies that are otherwise clearly qualified for listing.[21] The Exchange stated that some companies that are clearly large enough to be suitable for listing on the Exchange do not have their securities traded at all on a Private Placement Market prior to going public and, in other cases, the Private Placement Market trading is too limited to provide a reasonable basis for reaching conclusions about a company's qualification.[22] In proposing to adopt a Valuation that must be at least two-and-a-half times the $100 million requirement of Section 102.01B of the Manual, the Exchange stated that this amount "will give a significant degree of comfort that the market value of the company's shares will meet the [$100 million] standard upon commencement of trading on the Exchange," particularly because any such Valuation "must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations."[23]

Second, the Exchange proposed to further amend Footnote (E) by establishing certain criteria that would preclude a valuation agent from being considered "independent" for purposes of Footnote (E), which the Exchange believes will provide a significant additional guarantee of

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20 See proposed Section 102.01B, Footnote (E) of the Manual. The Commission notes that the Exhibit 5 to Amendment No. 3 contains the proposed rule language. Any references herein to the proposed rule language shall refer to the language available in Exhibit 5 to Amendment No. 3, which is available from the Exchange or on the Commission's website www.sec.gov. See also Notice, supra note 8.

21 See Notice, supra note 8, at 40184.

22 See id.

23 Id. In its proposal, the Exchange stated that it believed that it is unlikely that any Valuation would reach a conclusion that was incorrect to the degree necessary for a company using this provision to fail to meet the $100 million requirement upon listing, in particular because any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. See id.

the independence of any entity providing such a Valuation.[24] Specifically, the Exchange proposed that a valuation agent will not be deemed to be independent if:

- At the time it provides such Valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the Valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days;
- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the Valuation;[25] or
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.[26]

2. Trading Rules

The Exchange also proposed to amend Exchange Rules 15, 104 and 123D, governing the opening of trading, to specify procedures for the opening trade on the day of initial listing of a company that lists under the proposed amendments to Footnote (E) and did not have any recent trading in a Private Placement Market.[27]

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24 See id.

25 For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting. See proposed Section 102.01B, Footnote (E) of the Manual.

26 See id.

27 See Notice, supra note 8, at 41085.

Rule 15(b) provides that a DMM will publish a pre-opening indication[28] before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the "Applicable Price Range,"[29] from a specified "Reference Price."[30] Rule 15(c)(1) specifies that the Reference Price for a security (other than an American Depository Receipt) would be either (A) the security's last reported sale price on the Exchange; (B) the security's offering price in the case of an IPO; or (C) the security's last reported sale price on the securities market from which the security is being transferred to the Exchange.[31]

The Exchange proposed to amend Rule 15(c)(1) to add new sub-paragraph (D) to specify the Reference Price for a security that is listed under Footnote (E). The Exchange proposed that if such security has had recent sustained trading in a Private Placement Market prior to listing, the Reference Price in such scenario would be the most recent transaction price in that market or, if no such sustained trading has occurred, the Reference Price used would be a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.[32]

Rule 104(a)(2) provides that the DMM has a responsibility for facilitating openings and reopenings for each of the securities in which the DMM is registered as required under Exchange rules, which includes supplying liquidity as needed. The Exchange proposed to amend Rule

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28 Rule 15(a) states that a pre-opening indication will include the security and the price range within which the opening price is anticipated to occur. Pre-opening indications are published on the Exchange's proprietary data feeds and the securities information processor ("SIP"). See Rule 15(a). The Exchange may also publish order imbalance information prior to the opening of a security. The order imbalance information contains the price at which opening interest may be executed in full. See Rule 15(g).

29 See Rule 15(d) for a definition of "Applicable Price Range."

30 Rule 15(b) also provides that a DMM will publish a pre-opening indication if a security has not opened by 10:00 a.m. Eastern Time. See Rule 15(c) for a definition of "Reference Price."

31 See Rule 15(c)(1).

32 See proposed Rule 15(c)(1)(D).

104(a)(2) to require the DMM to consult with the issuer's financial advisor when facilitating the opening on the first day of trading of a security that is listing under Footnote (E) and that has not had recent sustained history of trading in a Private Placement Market prior to listing, in order to effect a fair and orderly opening of such security.[33]

The Exchange stated that it believes that such a financial advisor would have an understanding of the status of ownership of outstanding shares in the company and would have been working with the issuer to identify a market for the securities upon listing.[34] As a result, it believes such financial advisor would be able to provide input to the DMM regarding expectations of where such a new listing should be priced, based on pre-listing selling and buying interest and other factors that would not be available to the DMM through other sources.[35]

In its proposal, the Exchange stated that the proposed amendments to both Rule 15 and Rule 104 are designed to provide DMMs with information to assist them in meeting their obligations to open a new listing under the proposed amended text of Footnote (E).[36]

The Exchange further proposed to amend its rules to provide authority to declare a

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33 See proposed Rule 104(a)(2). The Exchange stated that this requirement is based in part on Nasdaq Rule 4120(c)(9), which requires that a new listing on Nasdaq that is not an IPO have a financial advisor willing to perform the functions performed by an underwriter in connection with pricing an IPO on Nasdaq. See Notice, supra note 8, at 40185.

34 See Notice, supra note 8, at 40185.

35 See id. The Exchange noted that despite the proposed obligation to consult with the financial advisor, the DMM would remain responsible for facilitating the opening of trading of such security, and the opening of such security must take into consideration the buy and sell orders available on the Exchange's book. See id. Accordingly, the Exchange stated that just as a DMM is not bound by an offering price in an IPO, and will open such a security at a price dictated by the buying and selling interest entered on the Exchange in that security, a DMM would not be bound by the input he or she receives from the financial advisor. See id. at 40185-86.

36 See id. at 40186.

regulatory halt for a non-IPO new listing. As proposed, Rule 123D(d) would provide that the Exchange may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange and that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing.[37] In addition, proposed Rule 123D(d) would provide that this regulatory halt would be terminated when the DMM opens the security.[38] The Exchange stated its belief that it would be consistent with the protection of investors and the public interest for the Exchange, as a primary listing exchange, to have the authority to declare a regulatory halt for a security that is the subject of a non-IPO listing because it would ensure that a new listing that is not the subject of an IPO could not be traded before the security opens on the Exchange.[39]

III. Summary of Comments

The Commission received two comments on the proposed rule change.[40] Both commenters supported the proposal.

One commenter urged the Commission to approve the proposal promptly and without

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37 See proposed Rule 123D(d). The Exchange proposed to renumber current subsection (d) of Rule 123D as subsection (e). See proposed Rule 123D(e).

38 See proposed Rule 123D(d). The Exchange stated that proposed Rule 123D(d) is based in part on (i) Nasdaq Rule 4120(c)(9), which provides that the process for halting and initial pricing of a security that is the subject of an IPO on Nasdaq is also available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market immediately prior to the initial public offering, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Nasdaq Rule 4120(c)(7)(B) that are performed by an underwriter with respect to an initial public offering; and (ii) Nasdaq Rule 4120(c)(8)(A), which provides that such halt condition shall be terminated when the security is released for trading on Nasdaq. See Notice, supra note 8, at 40186.

39 See Notice, supra note 8, at 40186.

40 See Angel Letter, supra note 5, and Cleary Gottlieb Letter, supra note 10.

further delay.[41] This commenter stated the belief that there is no public interest served in excluding the listing of a large company with many investors that does not need to raise additional capital through an IPO.[42] The commenter further stated that in determining whether a company is large enough to meet the listing standards, if a company were to trade at a market capitalization far below the thresholds, the harm would be to the Exchange's reputation, not to the investing public.[43] The commenter further discussed concerns about how NYSE will open the market for a security under the proposal when there is no reliable previous price or offering price.[44] The commenter stated that if NYSE gets the "offering price 'wrong,' the secondary market trading will quickly find the market price at which supply equals demand within a few minutes if not a few seconds."[45]

The other commenter also supported the proposal.[46] The commenter stated that, in terms of the lack of an offering price or price range for the securities, the factors that typically underpin the price determination in an IPO are all publicly available, such as knowledge of "comparable public companies and the trading prices of their shares and the corresponding financial metrics of

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41 See Angel Letter, supra note 5, at 1.

42 See id. at 2.

43 See id. at 3.

44 See id.

45 Id.

46 See Cleary Gottlieb Letter, supra note 10, submitted in response to the Order Instituting Proceedings. Several of the comments from this commenter focused on the Exchange's proposal to allow a company to list on the Exchange immediately upon effectiveness of an Exchange Act registration statement without any concurrent Securities Act registration. In Amendment No. 3, the Exchange removed this aspect of its proposal from its proposed rule change. Therefore, those comments that related solely to the deleted portion of the Exchange proposal are not relevant to the amended proposal. See Amendment No. 3, supra note 11.

the new issuer."[47] The commenter also stated that, in any case, "the opening price will be quickly adjusted through normal market forces."[48] Further, the commenter also did not believe that the lack of information on the number of shares that will likely be made available for sale was an issue because although the "absence of a certain block of shares offered at the outset necessarily creates greater uncertainty…, that concern seems to be reasonably mitigated by the practical reality that an issuer is unlikely to incur the cost – both out of pocket and in management time – of undertaking an exchange listing without having sounded out its shareholders about their general interest in possibly selling shares."[49]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[50] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Exchange Act,[51] 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 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. Section 6(b)(5) of the Exchange Act[52] also requires that

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47 Cleary Gottlieb Letter, supra note 10, at 3.

48 Id.

49 Id.

50 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).

51 15 U.S.C. 78f(b)(5).

52 Id.

the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has consistently recognized the importance of exchange listing standards. Among other things, such listing standards help ensure that exchange listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[53]

The Exchange has stated that it typically expects a company to list in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off.[54] The Exchange listing standards currently contain a provision, approved in 2008, that gives the Exchange discretion to list companies upon effectiveness of a registration statement under the Securities Act that is filed solely for the purpose of allowing existing shareholders to resell shares they obtained in earlier private placements if such companies can evidence $100 million of publicly held shares based on the lesser amount from a Valuation provided by an independent third party or the price in a Private Placement Market.[55]

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53 The Commission has stated in approving exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. See, e.g., Securities Exchange Act Release Nos. 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR-NYSE-2017-31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR-NYSE-2017-11). The Commission notes that, in general, adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange 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.

54 See Notice, supra note 8, at 40183.

55 According to the Exchange, companies listing their securities upon a selling shareholder registration statement have sold securities in one or more private placements and do not

As noted above, the Exchange has proposed to provide an alternative in cases where there is not sufficient Private Placement Market trading to establish a reliable price. The Exchange has also proposed additional standards concerning the independence of the third party agent providing the Valuation.

The Commission believes that the proposed rule change will provide a means for a category of companies with securities that have not previously been traded on a public market and that are listing only upon effectiveness of a selling shareholder registration statement, without a related underwritten offering, and without recent trading in a Private Placement Market, to list on the Exchange. In particular, for such companies that otherwise meet NYSE's listing standards,[56] the proposed rule change will provide that, in the absence of any recent trading in a Private Placement Market, the Exchange will determine that such company has met its market value of publicly-held shares requirement if the company provides a Valuation from

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wish to raise cash in an offering at the time of listing, unlike a company listing in conjunction with its IPO. Because the Exchange believed such companies meeting all other listing standards should not be barred from listing, the Exchange proposed Footnote (E) to the listing standards which the Commission approved in 2008. In proposing Footnote (E) in 2008, the Exchange stated that with such companies, there is no public trading market to rely on to evaluate whether the company meets the market value standard as with a company transferring from another market, nor is there a public offering whose price would provide the basis for a letter of the type typically provided by underwriters for companies listing in conjunction with an IPO. See Section 102.01B, Footnote (E); Securities Exchange Act Release No. 58550 (September 15, 2008), 73 FR 54442, 54442-43 (September 19, 2008) (SR-NYSE-2008-68) ("NYSE 2008 Order"). See also notes 18-19 supra and accompanying text, describing the requirements in current rule to be able to rely on a Private Placement Market.

56 Companies listing upon an effective registration statement would have to meet the distribution requirements set forth in Section 102.01A (i.e., that the company have 400 beneficial holders of round lots of 100 shares and 1,100,000 publicly-held shares), the requirements of Section 102.01B (which includes a $4.00 price requirement at the time of initial listing), and one of the financial standards set forth in Section 102.01C of the Manual (i.e., the Earnings Test or the Global Market Capitalization Test), as well as comply with all other applicable NYSE rules, including the corporate governance requirements.

an independent third party evidencing a market value of publicly-held shares of at least $250 million. According to the Exchange, "[a]dopting a requirement that the Valuation must be at least two-and-a-half times the $100 million requirement will give a significant degree of comfort that the market value of the company's shares will meet the standard upon commencement of trading on the Exchange."[57] The Commission believes that requiring a company that does not have a recent and sustained history of trading of its securities in a Private Placement Market to provide a Valuation of at least $250 million should provide the Exchange with a reasonable level of assurance that the company's market value supports listing on the Exchange and the maintenance of fair and orderly markets thereby protecting investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

Exchange rules also seek to ensure that the Valuation is reliable by requiring it to be provided by an independent third party that has significant experience and demonstrable competence in providing valuations of companies.[58] The proposed rule change establishes additional independence criteria, pursuant to which the valuation agent will not be "independent" if the valuation agent, or any affiliated person, owns in the aggregate more than 5% of the securities to be listed,[59] or has provided investment banking services to the company in the 12

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57 See Notice, supra note 8, at 40184. Further, in approving Footnote (E) in 2008, the Commission recognized that "the most recent trading price in a Private Placement Market may be an imperfect indication as to the value of a security upon listing, in part because the Private Placement Markets generally do not have the depth and liquidity and price discovery mechanisms found on public trading markets." NYSE 2008 Order, supra note 55, at 54443.

58 See Footnote (E) for additional requirements for the Exchange to be able to rely on the Valuation.

59 This calculation of ownership will include any right to receive such securities exercisable within 60 days.

months prior to the Valuation or in connection with the listing.[60] The Commission believes that, consistent with Section 6(b)(5) of Exchange Act and the protection of investors, these new independence requirements should help to ensure that the Valuation is reliable.[61]

The Exchange also has proposed to amend certain of its procedures to address how the DMM is to establish the Reference Price in connection with the opening, on the first day of trading, of a security listed under Footnote (E).[62] Specifically, for a security with sustained trading in a Private Placement Market, the Reference Price will be the most recent transaction price in that market; otherwise the Reference Price will be determined by the Exchange in consultation with a financial advisor to the issuer. The DMM will also be required to consult with the financial advisor to the issuer where there is no recent sustained history of trading in order to effect a fair and orderly opening of such security.[63] The Commission believes that the proposed changes should help establish a reliable Reference Price, and provide additional information to the DMM, and thereby facilitate the opening by the DMM, when trading first commences on the Exchange for certain securities not listed in connection with an underwritten

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60 See supra notes 24-26, and accompanying text.

61 The Commission also notes that companies listing pursuant to the new proposed provision will be required to meet the distribution requirements of Section 102.01A of the Manual, the requirements of Section 102.01(B) of the Manual, and one of the financial standards in Section 102.01C of the Manual, which are the same requirements that apply to most equity listings on the Exchange. See note 56, supra.

62 Under Rule 15 a DMM is required to publish a pre-opening indication before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the "Applicable Price Range" from a specified Reference Price. Under Rule 15, for example, the "Applicable Price Range" for determining whether to publish a pre-opening indication is 5% for securities with a Reference Price over $3.00.

63 In its proposal, the Exchange stated that such "financial advisor would be able to provide input to the DMM regarding expectations of where such a new listing should be priced, based on pre-listing selling and buying interest and other factors that would not be available to the DMM through other sources." See Notice, supra note 8, at 40185.

IPO, and should help to promote fair and orderly markets. The Commission believes these changes, consistent with Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the public interest and promote just and equitable principles of trade for the opening of securities listed under the new standards.

Finally, the Exchange has proposed that it be permitted to declare a regulatory halt in certain securities that are the subject of an initial pricing on the Exchange, and have not been listed on an exchange or quoted in an over-the-counter quotation medium immediately prior thereto. Such regulatory halt will be terminated when the DMM opens the security, and is for the limited purpose of precluding other markets from trading a security until the Exchange has completed the initial pricing process. The Commission believes this proposed change also should facilitate the initial opening by the DMM of certain securities not listed in connection with an underwritten IPO, and thereby promote fair and orderly markets and the protection of investors.[64]

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Exchange Act.

V. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

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64 The proposed regulatory halt allows the Exchange to have a similar opening procedure for securities listed pursuant to Footnote (E) as an IPO security under Section 12(f) of the Exchange Act and Rule 12f-2, since such securities raise similar issues in terms of initial pricing on the first day of trading. See 15 U.S.C. 78l(f); 17 CFR 240.12f-2. Similar to unlisted trading privilege rules that prevent other exchanges from trading an IPO security until the primary listing market has reported the first opening trade, the regulatory halt will allow the DMM to complete the initial pricing and open the security before other markets can trade.

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-2017-30 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-30. 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 such 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-2017-30, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of the notice of Amendment No. 3 in the Federal Register. The Commission notes that the proposed rule change, as modified by Amendment No. 3 remains identical to the version published for notice and comment on August 24, 2017,[65] except for the proposed deletion described above,[66] and that the only comments the Commission received on this proposed rule change were in support of the proposal. The Commission also has found that the proposal, as modified by Amendment No. 3, is consistent with the Exchange Act for the reasons discussed herein. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[67]

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,[68] that

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65 See Notice, supra note 8.

66 See note 11, supra.

67 15 U.S.C. 78s(b)(2).

68 Id.

the proposed rule change (SR-NYSE-2017-30), as modified by Amendment No. 3 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Brent J. Fields,

Secretary.

[69] 17 CFR 200.30-3(a)(12).

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