

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100102; File No. SR-NYSE-2024-23)

May 10, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to amend Section 703.12(II) of the NYSE Listed Company Manual to Expand the Circumstances under which Rights may be Listed on the NYSE

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 April 29, 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 703.12(II) of the NYSE Listed Company Manual (“Manual”) to expand the circumstances under which rights may be listed on the NYSE. The text of the proposed rule change is set forth in Exhibit 5. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Section 703.12(II) of the Manual provides for the listing of rights on the NYSE. For purposes of Section 703.12(II), the term "rights" refers to the privilege offered to holders of record of issued equity securities to subscribe for additional securities of the same class. Consistent with this definition, rights that have traded on the Exchange historically have involved a distribution of rights to the holders of a class of equity securities that is already listed on the Exchange, and such rights have typically been limited to granting the recipients the right to subscribe for additional shares of the listed class of equity securities they already hold.

While it has historically been the case that rights traded on the Exchange have been granted only to existing shareholders of the issuer, the Exchange does not believe that there is an investor protection concern that justifies that limitation. Consequently, the Exchange proposes to amend Section 703.12(II) to provide that the term "rights" will also refer to the privilege offered recipients of such rights to subscribe for shares of a class of securities of such issuer that is listed or to be listed on the Exchange, regardless of whether the recipients of the rights are existing shareholders of record of such issuer.

Section 703.12(II) currently provides that, in order 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 on the Exchange concurrent with the rights. The Exchange proposes to expand the circumstances in which a right may be listed to permit the listing of a right where the security

into which such right is exercisable will be listed on the Exchange upon exercise of the rights and such exercise is pursuant to a registration statement filed under the Securities Act of 1933 (a “Securities Act Registration Statement”) that has been declared effective by the SEC prior to or simultaneous with the listing of such rights (such rights will be defined in the proposed amended rule as “Prospective Listing Rights”). The proposed provisions relating to Prospective Listing Rights mean that some listed rights may list and trade on the Exchange prior to the listing and trading of the securities for which such rights are exercisable. The Exchange believes that this amendment will give issuers greater flexibility in structuring a rights offering as a capital raising tool. Specifically, the Exchange believes that the requirement that there be an effective Securities Act Registration Statement in relation to the exercise of the Prospective Listing Rights prior to or simultaneous to the listing of the Prospective Listing Rights would provide a significant investor protection as it would ensure that investors trading or exercising the Prospective Listing Rights would have access to the appropriate level of disclosure to enable them to make informed investment decisions. The Exchange notes that the issuer of the Prospective Listing rights will be required by law to update this Securities Act Registration Statement to reflect any material changes in the information required to be included therein that arise between the time of effectiveness of the Securities Act Registration Statement and the exercise of the Prospective Listing Rights, thereby ensuring that investors trading the Prospective Listing Rights on the Exchange will have access to current information about the issuer on a continuous basis.

Any security underlying a Prospective Listing Right will be required to meet applicable initial listing standards set forth in Section 102.00 or Section 103.00. Prospective Listing Rights would only be eligible for initial listing if, at the time of initial listing, there were (i) at least

1,000,000 rights issued and (ii) at least 400 public holders of round lots.⁴ The Exchange notes that these distribution requirements are identical to those required for securities to be listed under the “equity” standards (i.e., for trading on the NYSE’s trading floor) under Section 703.19 (“Other Securities”) of the Manual.

If it is determined that the security for which the Prospective Listing Rights are exercisable will not be listed on the Exchange (which may occur for a variety of reasons, including because the Exchange determines that the underlying securities are no longer eligible for listing or the issuer chooses to terminate the Prospective Listing Rights because the transaction that they were intended to fund has been terminated), the Exchange will promptly initiate suspension and delisting procedures with respect to such Prospective Listing Rights.

In addition, if the market value of publicly-held shares of a series of Prospective Listing Rights at any time is less than \$4,000,000, the Exchange will promptly initiate suspension and delisting procedures with respect to such Prospective Listing Rights. The Exchange notes that this \$4,000,000 continued listing requirement is comparable to the \$4,000,000 initial market value requirement for securities to be listed under the “equity” standards under Section 703.19 (“Other Securities”) of the Manual. If Prospective Listing Rights remain outstanding at the time of the initial listing on the Exchange of the securities into which such Prospective Listing Rights are exercisable, the Prospective Listing Rights must at such time meet all of the initial listing requirements applicable to the listing of rights other than Prospective Listing Rights. Any Prospective Listing Rights that do not meet such requirements will be subject to immediate suspension and delisting procedures. If the Exchange commences delisting procedures in either

⁴ For purposes of Section 703.12(II), “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 total outstanding shares.

of the circumstances with respect to Prospective Listing Rights set forth in this paragraph, the issuer of the Prospective Listing Rights will not be eligible to avail itself of the provisions of Sections 802.02 and 802.03 and any such Prospective Listing Rights will be subject to delisting procedures as set forth in Section 804.00.

Finally, as the definition of “public holders” will now also be used in the proposed listing requirements for Prospective Listing Rights, the Exchange proposes to move that definition to the end of Section 703.12(II) without changing the wording of the definition in any way.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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 notes the existence of a significant protection of the interests of existing shareholders of listed common stock where the listed issuer grants rights to recipients other than the existing shareholders of that listed class. Section 312.03(c) of the Manual requires (subject, generally, to exceptions for cash sales at the Minimum Price⁷ and public offerings) that a listed

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ Section 312.04(h) defines “Minimum Price” as a price that is the lower of: (i) the Official Closing Price immediately preceding the signing of the binding agreement; or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement. Section 312.04(i) defines the “Official Closing Price” of the issuer's common stock as the official closing price on the

issuer must obtain shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions if: (1) the common stock has, or will have upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or (2) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock. Nasdaq Rule 5635 and NYSE American Company Guide Section 713 include comparable requirements. Consequently, generally, rights offerings by listed issuers of common stock or of securities that are convertible into or exercisable for common stock would be subject to shareholder approval if the rights were being issued to recipients other than the holders of the listed common stock and (1) the shares of common stock underlying the rights have, or will have upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or (2) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock. As such, the holders of the listed common stock would have the ability to block any rights offering that was materially dilutive of their economic or voting interests.

Exchange as reported to the Consolidated Tape immediately preceding the signing of a binding agreement to issue the securities. For example, if the transaction is signed after the close of the regular session at 4:00 pm Eastern Standard Time on a Tuesday, then Tuesday's official closing price is used. If the transaction is signed at any time between the close of the regular session on Monday and the close of the regular session on Tuesday, then Monday's official closing price is used.

The Exchange believes it is consistent with the protection of investors to expand the circumstances in which a right may be listed to permit the listing of a right where the security into which such right is exercisable will be listed upon exercise of the rights and such exercise is pursuant to a Securities Act Registration Statement that has been declared effective by the SEC prior to or simultaneous with the listing of such rights (i.e., Prospective Listing Rights). The requirement that there be an effective Securities Act Registration Statement in relation to the exercise of the rights prior to or simultaneous with the listing of the Prospective Listing Rights would, in the Exchange's view, provide a significant investor protection as it would ensure that investors trading or exercising the Prospective Listing Rights would have access to the appropriate level of disclosure to enable them to make informed investment decisions. In particular, the Exchange believes that the availability of an effective Securities Act Registration Statement at the time of initial listing of the Prospective Listing Rights including disclosure about the anticipated business and financial position of the issuer as it will exist upon exercise of the Prospective Listing Rights (and the listing of the underlying securities on the Exchange) will provide investors in the Prospective Listing Rights with the ability to make judgments about the anticipated value of the underlying securities by making comparisons to the market values of comparable listed companies. The Exchange also believes that the obligation of the issuer of Prospective Listing Rights under the Securities Act and the rules thereunder to amend the Securities Act Registration Statement up to the time of exercise of the Prospective Listing Rights to reflect any material changes in the issuer's business or financial condition will ensure that investors will have access to adequate disclosure to enable them to value the securities throughout the life of the Prospective Listing Rights. Furthermore, the issuer of Prospective Listing Rights would be subject to the requirements of Sections 202.05 and 202.06 of the

Manual, which require immediate disclosure of all material news. The Exchange believes that these requirements under the securities laws and Exchange rules will provide investors in Prospective Listing Rights with an appropriate level of access to information to make investment decisions and that this robust level of disclosure will also act as a significant safeguard against illegal manipulation of the securities.

The Exchange notes that the proposal does not include any limitations on how long Prospective Listing Rights may remain outstanding prior to their exercise and the listing of the underlying securities. The Exchange believes that there are practical commercial reasons why such a requirement is unnecessary. Investors are unlikely to find it attractive to commit their capital to the exercise of rights if the exercise period is extended for more than a limited period. If the exercise period is excessive, rightholders are likely to withdraw from the offer, making the success of a long offering period unlikely.

As proposed, Prospective Listing Rights must meet initial listing requirements of at least (i) 1,000,000 rights issued and (ii) 400 public holders of round lots. In addition, listed Prospective Listing Rights would be subject to the prompt commencement of suspension and delisting procedures if (i) it is determined that the security for which the Prospective Listing Rights are exercisable will not be listed on the Exchange or (ii) the market value of publicly-held shares of a series of Prospective Listing Rights falls below \$4,000,000. If the Exchange commences delisting procedures in the circumstances with respect to Prospective Listing Rights set forth in this paragraph, the issuer of the Prospective Listing Rights will not be eligible to avail itself of the provisions of Sections 802.02 and 802.03 and any such listed rights will be subject to delisting procedures as set forth in Section 804.00. The Exchange believes that these initial and continued listing requirements will protect investors by helping to ensure trading liquidity in the

Prospective Listing Rights and also ensuring that such rights will not be traded unless the underlying security is expected to list on the Exchange. The Exchange notes that the proposed initial and continued quantitative listing standards for Prospective Listing Rights are identical to (or, in the case of the market-value of publicly-held shares requirement more rigorous than) those required for securities to be listed under the “equity” standards (i.e., for trading on the NYSE’s trading floor) under Section 703.19 (“Other Securities”) of the Manual. As the Exchange has extensive experience with the application of those standards under Section 703.19 and believes that they have provided adequate investor protection when used in that context, the Exchange believes that these standards will also provide adequate protection to investors in Prospective Listing Rights.

The Exchange is not proposing to adopt any initial market value or security price requirements for Prospective Listing Rights. However, the Exchange notes that proposed \$4,000,000 market value of publicly-held shares requirement would be applied immediately and therefore imposes a minimum trading value for Prospective Listing Rights at the time of initial listing. The Exchange believes that this requirement ensures that Prospective Listing Rights will not commence trading on the Exchange unless the market believes that they have a more than nominal trading value.

The Exchange believes that its existing surveillance procedures are adequate to enable it to detect manipulative trading practices with respect to Prospective Listing Rights. The Exchange notes that the NYSE and other self-regulatory organizations have extensive experience in conducting surveillance of the trading in securities whose value, like that of Prospective Listing Rights, is substantially dependent on the issuer’s future acquisition of an identified operating asset, including for example, listed SPACs that are trading on the Exchange after

entering into a definitive agreement with respect to a business combination. The Exchange also believes that market participants are able to arrive at market prices for such securities without excessive volatility and that this experience provides a reasonable basis for understanding how Prospective Listing Rights are likely to trade.

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 believes that the proposed rule change will increase competition by giving issuers enhanced opportunities to raise capital by giving them greater flexibility in structuring rights offering as a capital raising tool.

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-2024-23 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-2024-23. 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-2024-23 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.⁸

Sherry R. Haywood,
Assistant Secretary.

⁸ 17 CFR 200.30-3(a)(12).