

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96408; File No. SR-NYSE-2022-54)

November 30, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Listed Company Manual Section 302.00

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 21, 2022, 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 and II 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 Listed Company Manual Section 302.00 to exclude Exchange-Traded Fund Shares listed pursuant to Rule 5.2(j)(8) from the obligation to hold annual shareholders’ meetings. 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 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

The Exchange proposes to amend Listed Company Manual Section 302.00 to exclude Exchange-Traded Fund Shares listed pursuant to Rule 5.2(j)(8) from the obligation to hold annual shareholders’ meetings. Exchange-Traded Fund shares are Derivative Securities Products³ permitted to operate in reliance on Rule 6c-11 (“Rule 6c-11”) under the Investment Company Act of 1940 (“1940 Act”).⁴

Listed Company Manual Section 302.00 provides that companies listing common stock or voting preferred stock and their equivalents are required to hold an annual shareholders’ meeting for the holders of such securities during each fiscal year. Listed Company Manual Section 302.00 currently exempts, among other securities, Exchange-Traded Funds (“ETFs”) listed under Rule 5.2-(j)(3) (Investment Company Units) or Commentary .01 to Rule 8.600 (Managed Fund Shares) and other derivative securities from the Exchange’s annual shareholder meeting requirement.

The Exchange proposes to amend Section 302.00 of the Listed Company Manual to add Exchange-Traded Fund Shares listed pursuant to Rule 5.2(j)(8) to the list of securities for which the requirements of Section 302.00 regarding annual shareholders’ meetings do not apply. The

³ The term “Derivative Securities Product” is defined in Rule 1.1(k) to mean a security that meets the definition of “derivative securities product” in Rule 19b4(e) under the Exchange Act. 17 CFR 240.19b-4(e).

⁴ See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019).

proposed change is based on, and would align Section 302.00 of the Listed Company Manual with, NYSE Arca Rule 5.3-E(e), which exempts Exchange-Traded Fund Shares listed under NYSE Arca Rule 5.2-E(j)(8), from the shareholder/annual meeting requirements. NYSE Rule 5.2(j)(8) and NYSE Arca Rule 5.2-E(j)(8) are substantially similar.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,⁶ in that 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 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.

The Exchange believes that the proposal to amend Listed Company Manual Section 302.00 to include Exchange-Traded Fund Shares listed pursuant to Rule 5.2(j)(8) among the securities exempted from the annual shareholders' meeting requirement is designed to prevent fraudulent and manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market and a national market system because such securities, like ETFs and other derivative securities currently exempted from the requirements of Listed Company Manual Section 302.00, would remain subject to the same requirements currently applicable to other 1940 Act-registered investment company securities (e.g., Investment Company Units, Managed Fund Shares, and Portfolio Depositary Receipts). As noted, the

⁵ See Securities Exchange Act Release No. 91029 (February 1, 2021), 86 FR 8420, 8424 (February 5, 2021) (SR-NYSE-2020-86) (Order Approving a Proposed Rule Change To Adopt NYSE Rule 5.2(j)(8) Governing the Listing and Trading of Exchange-Traded Fund Shares).

⁶ 15 U.S.C. 78f(b)(5).

proposed change is based on NYSE Arca Rule 5.3-E(e), which exempts Exchange-Traded Fund Shares listed under the listing standards for such products under NYSE Arca Rule 5.2-E(j)(8) (Exchange-Traded Fund Shares), from substantially similar requirements with respect to annual meetings. The proposed change would thus make Listed Company Manual Section 302.00 consistent with NYSE Arca Rule 5.3-E(e), resulting in similar treatment of ETFs permitted to operate in reliance on Rule 6c-11 under the 1940 Act across affiliated exchanges for purposes of the annual meeting requirement.

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

In accordance with Section 6(b)(8) of the Act,⁷ the Exchange believes that the proposed rule change would not 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 would facilitate the listing and trading of Exchange-Traded Fund Shares listed pursuant to Rule 5.2(j)(8) on the Exchange, thereby enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

⁷ 15 U.S.C. 78f(b)(8).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to promptly provide its listed ETFs the same exemption from annual meeting requirements that currently applies to ETFs listed on NYSE Arca. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁴

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁵ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2022-54 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2022-54. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

¹⁵ 15 U.S.C. 78s(b)(2)(B).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2022-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood

Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12), (59).