

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101306; File No. SR-NYSE-2024-48)

October 10, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Section 802.01C of the NYSE Listed Company Manual (Price Criteria for Capital or Common Stock) to Limit the Use of Reverse Stock Splits to Regain Compliance with the Price Criteria in Certain Circumstances

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 September 30, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“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 802.01C (“Price Criteria for Capital or Common Stock”) of the NYSE Listed Company Manual to modify the implications of a reverse stock split for an issuer that falls below compliance with the price criteria set forth in that rule. 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 802.01C (“Price Criteria for Capital or Common Stock”) of the NYSE Listed Company Manual (the “Manual”) provides that a listed company will be considered to be below compliance standards if the average closing price of a security as reported on the consolidated tape is less than \$1.00 over a consecutive 30 trading-day period (the “Price Criteria”). While the term “Price Criteria” is used as a defined term in Section 802.01C, the current rule does not actually provide a definition for the term. Consequently, the Exchange proposes to define the term in the rule using the definition set forth in the immediately preceding sentence.

Once notified that it has fallen below the Price Criteria, the company must bring its share price and average share price back above \$1.00 by six months following receipt of the notification. A company is not eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to this criteria. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures as set forth in Section 804.00 of the Manual. The company can regain compliance at any time during the six-month cure period if on the last trading day of any calendar month during the cure period the company has a closing share price of at least \$1.00 and an average closing share price of at least \$1.00 over the 30 trading-day period ending on the last trading day of that month. In the event that at the expiration of the six-month cure period, both a \$1.00 closing share price on the last trading day of the cure

period and a \$1.00 average closing share price over the 30 trading-day period ending on the last trading day of the cure period are not attained, the Exchange will commence suspension and delisting procedures as set forth in Section 804.00.

Notwithstanding the foregoing, if a company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The company will be deemed to have regained compliance with the Price Criteria if the price promptly exceeds \$1.00 per share, and the price remains above the level for at least the following 30 trading days. The action taken by a company to cure its noncompliance with the Price Criteria that is subject to shareholder approval is generally a reverse stock split.

The Exchange proposes to amend Section 802.01C to limit the circumstances under which a listed company may utilize a reverse stock split to regain compliance with the Price Criteria. Specifically, the Exchange proposes that, notwithstanding the general ability of a company to utilize a reverse stock split as a mechanism for regaining compliance with the Price Criteria if a company's security fails to meet the Price Criteria and (i) the company has effected a reverse stock split over the prior one-year period⁴ or (ii) has effected one or more reverse stock splits over the prior two-year period with a cumulative ratio of 200 shares or more to one, then the company shall not be eligible for any compliance period specified in Section 802.01C and the Exchange will immediately commence suspension and delisting procedures with respect to such security in accordance with Section 804.00. Section 804.00 of the Manual provides that these

⁴ For the avoidance of doubt, the proposed rule would apply to a company even if the company was in compliance with the Price Criteria at the time of its prior reverse stock split.

companies can seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange. Furthermore, the Exchange proposes that a listed company would not be allowed to effectuate a reverse stock split, for purposes of regaining compliance with the Price Criteria or otherwise, if the effectuation of such reverse stock split results in the company's security falling below the continued listing requirements of Section 802.01A. If a listed company effectuated a reverse stock split notwithstanding this proposed limitation, the Exchange would promptly commence suspension and delisting procedures with respect to such company in accordance with Section 804.00.

As described above, many companies seek to cure their noncompliance with the Price Criteria or seek to increase their stock price for other reasons by effectuating a reverse stock split. However, the Exchange has observed that some companies, typically those in financial distress or experiencing a prolonged operational downturn, engage in a pattern of repeated reverse stock splits. The Exchange believes that such behavior is often indicative of deep financial or operational distress within such companies rendering them inappropriate for trading on the Exchange for investor protection reasons. In these situations, the Exchange has observed that the challenges facing such companies, generally, are not temporary and may be so severe that the company is not likely to maintain or regain compliance on a sustained basis.

The Exchange believes that the restrictions set forth in this proposal on the excessive use of reverse splits as a means of maintaining or regaining compliance with the Price Criteria will protect investors by resulting in the delisting of companies whose history of recurring inability to maintain price compliance is indicative of their financial instability and unsuitability for continued listing.

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 Act,⁶ 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. The Exchange believes the proposal protects investors and the public interest by enhancing the Exchange's listing requirements and limiting the ability of listed companies with a history of having a low stock price to use reverse stock splits as a means to remain qualified for listing. In that regard, the Exchange has observed that the challenges facing such companies generally are not temporary and may be so severe that the company is not likely to remain compliant with the Price Criteria after curing non-compliance by means of a reverse stock split. Moreover, the price concerns with these companies can be a leading indicator of other listing compliance concerns, and these companies often become subject to delisting for other reasons within a short period of time.

The Exchange believes that it is consistent with the protection of investors and the public interest to delist any company that takes a deliberate action that causes it to fall below an Exchange listing standard, including as in the current proposal, the effectuation of a reverse split that causes a company to fall below a quantitative continued listing standard.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

The Exchange believes that the adoption of the term “Price Criteria” as a defined term provides helpful clarification of the rule without making any substantive change to the rule text.

The Exchange believes the proposed rule change furthers the objectives of Section 6(b)(7) of the Act⁷ in that the Exchange continues to provide a fair procedure for companies subject to these enhanced listing requirements. Section 804.00 of the Manual provides that these companies can seek review of a delisting determination from the Committee for Review of the Board of Directors of the Exchange. As a result, the Exchange believes that the proposed rule appropriately balances the need for appropriate listing standards with the statutory requirement to protect investors and the public interest.

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.⁸ While the Exchange does not believe there will be any impact on competition from the proposed change, any impact on competition that does arise will be necessary to better protect investors, in furtherance of a central purpose of the Act.

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 protect investors and facilitate a fair and orderly market, which are both important purposes of the Act. To the extent that there is any impact on intermarket competition, it is incidental to these objectives.

⁷ 15 U.S.C. 78f(b)(7).

⁸ 15 U.S.C. 78f(b)(8).

The Exchange does not believe that the proposed rule change imposes a burden on intra-market competition because the provisions apply to all market participants and issuers on the Exchange equally.

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-2024-48 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-2024-48. 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-2024-48 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.⁹

Sherry R. Haywood,
Assistant Secretary.

⁹ 17 CFR 200.30-3(a)(12).