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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-82225; File No. SR-NYSE-2017-42]**

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the NYSE Listed Company Manual to Modify Its Requirements with Respect to Delivery of Proxy Materials to the Exchange**

December 6, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 22, 2017, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 the NYSE Listed Company Manual (the “Manual”) to modify its requirements with respect to delivery of proxy materials to the Exchange. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 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 the Manual to modify its requirements with respect to delivery of proxy materials to the Exchange.

The Manual currently includes two provisions requiring listed companies to provide physical copies of proxy materials to the Exchange. Section 204.00(B) requires listed companies to provide six hard copies of proxy materials not later than the date on which the material is physically or electronically delivered to shareholders. Section 402.01 requires listed companies to provide three definitive copies of the proxy material (together with proxy card) not later than the date on which such material is sent, or given, to any security holders.

The Exchange proposes to delete from Section 204.00(B) a provision stating that listed companies are required to file hard copies of certain SEC reports and other material (such as proxies) with the Exchange, as this provision is inconsistent with the Exchange's proposed revised approach to the review of SEC filings. To that end, the Exchange proposes to modify Section 204.00(B) so as to require companies to send hard copy proxy materials to the Exchange only (i) in the circumstances specified by Section 402.01 in its proposed amended form and (ii)

one hard copy of any filing that is not required to be filed through EDGAR, including pursuant to a hardship exemption granted by the SEC.

In addition, the Exchange proposes to amend Section 402.01 to provide that listed companies will not be required to provide proxy materials to the Exchange in physical form, provided such proxy materials are included in an SEC filing available on the SEC's EDGAR filing system. Any listed company whose proxy materials are available on EDGAR but not filed pursuant to Schedule 14A under the Act will be required to provide to the Exchange information sufficient to identify such filing (by one of the means specified in Section 204.00(A)) not later than the date on which such material is sent, or given, to any security holders. Notwithstanding the foregoing, any listed company whose proxy materials are not included in their entirety (together with proxy card) in an SEC filing available on EDGAR will continue to be required to provide three physical copies of any proxy material not available on EDGAR to the Exchange not later than the date on which such material is sent, or given, to any security holders, consistent with the requirements of Rule 14a-6(b) under the Act.<sup>4</sup> The Exchange also proposes to correct an erroneous reference to Rule 14-a(6)(c) [sic] in Section 402.01 to refer instead to part (c) of that rule.

The Exchange notes that almost all U.S. domestic listed companies are subject to the SEC's proxy rules. Those companies are required to file their proxy materials on the SEC's EDGAR system and the relevant filings are readily identifiable as being filed under Schedule 14A under the U.S. proxy rules. Exchange staff receives alerts when filings are submitted to the SEC and generally reviews proxy materials on EDGAR shortly after filing. This review has

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<sup>4</sup> 17 CFR 14a-6(b).

generally been completed long before the Exchange receives hard copies of proxy materials and the Exchange therefore has no real need to receive hard copies.

Listed foreign private issuers are not required to comply with the U.S. proxy rules, although the NYSE does require these companies to solicit proxies. However, many foreign private issuers furnish and submit their proxy materials to the SEC as part of a Form 6-K (or, in the case of foreign private issuers that voluntarily submit periodic reports applicable to domestic companies, proxy materials may instead be included in a Form 8-K). As foreign private issuers often file or submit a significant number of Forms 6-K (or Form 8-K, as the case may be) during a year and there is no easy way to identify which one includes a company's proxy materials, the Exchange proposes to require listed foreign private issuers to provide to the Exchange in electronic format the information needed to identify the submission containing proxy materials. Similarly, domestic companies occasionally file their proxy materials with the SEC on EDGAR on forms other than Schedule 14A and which may not be readily identified by Exchange staff (for example, such material may be included in a Form S-4 registration statement). The Exchange's proposal would require such companies to provide electronically to the Exchange the information needed to identify the applicable filing in which the proxy material is included. In each of these cases, the information must be provided by one of the means specified in Section 204.00(A).<sup>5</sup> However, in the event that an issuer is not required to file its proxy material on EDGAR (e.g., pursuant to a hardship exemption provided by the SEC staff<sup>6</sup>) or does not include all of the relevant proxy material in its entirety in a filing that can be reviewed on EDGAR, the

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<sup>5</sup> Section 204.00 requires that notice must be provided via a web portal or email address specified by the Exchange on its website, except in emergency situations, when notification may instead be provided by telephone and confirmed by facsimile as specified by the Exchange on its website.

<sup>6</sup> See 17 CFR 232.201 and .202.

company must provide three physical copies of all of the proxy material unavailable on EDGAR to the Exchange not later than the date on which such material is sent, or given, to any security holders.

The Exchange's proposed approach would ensure that the Exchange staff will continue to be able to review all listed company proxy material in a timely manner and without disruption of existing review procedures. The proposal also has the benefit of eliminating a significant amount of unnecessary use of paper and of resources devoted to processing unneeded materials received through the mail.

The Exchange recognizes that Rule 14a-6(b) under the Act requires listed companies that are subject to the U.S. proxy rules to deliver hard copies of proxy materials to their listing exchange. In this regard, the Exchange notes that it has previously been granted no action relief by the SEC staff in relation to the obligation of listed companies to provide hard copy material to the Exchange of materials filed with the SEC via EDGAR, including proxy materials.<sup>7</sup> At the time that such no action relief was granted, the Exchange decided not to rely on it in relation to proxy materials, but believes that it is appropriate to do so now for the reasons set forth above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and

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<sup>7</sup> See letter dated July 22, 1998 from Ann M. Krauskopf, Special Counsel, Division of Corporation Finance, SEC, and Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, SEC, to Michael J. Simon, Milbank, Tweed, Hadley & McCloy (the "1998 No-Action Letter"). The 1998 No-Action Letter also granted the Exchange relief in relation to documents available for review on EDGAR from the recordkeeping requirements of Rule 17a-1 under the Act.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 proposed rule change is consistent with the protection of investors and the public interest because the Exchange will generally be able to review proxy materials on EDGAR and will continue to require companies to provide proxy materials to the Exchange in physical form if they are not filed on EDGAR. It is consistent with the protection of investors and the public interest to require companies to provide the Exchange with information via its own online system as to how to identify the applicable SEC filing in which proxy materials not filed on Schedule 14A may be found, as this approach will enable the Exchange to review this material in a more timely and efficient manner. The ability of the Exchange to review material in a more timely manner furthers the goal of investor protection, as it enables the Exchange to identify regulatory issues more quickly and take corrective action where necessary. The Exchange recognizes that Rule 14a-6(b) under the Act requires listed companies that are subject to the U.S. proxy rules to deliver hard copies of proxy materials to their listing exchange. In this regard, the Exchange notes that it has previously been granted no action relief by the SEC staff in relation to the obligation of listed companies to provide hard copy material to the Exchange of materials filed with the SEC via EDGAR.

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 purpose of the Act. The Exchange does not believe that the proposed amendments will impose any burden on

competition, as their purpose is to eliminate unnecessary deliveries of physical proxy materials to the Exchange.

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 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2017-42 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-2017-42. 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 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-2017-42 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.<sup>10</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>10</sup> 17 CFR 200.30-3(a)(12).

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