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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-86351; File No. SR-NYSE-2019-32]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change to Amend NYSE Rule 123D

July 11, 2019

I. Introduction

On May 24, 2019, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Rule 123D to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the Exchange. The proposed rule change was published for comment in the Federal Register on June 6, 2019.[3] The Commission has received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Rule 123D(d) to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the Exchange.

Currently, Rule 123D(d) permits the Exchange to declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security and that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 85990 (May 31, 2019), 84 FR 26462 (June 6, 2019) ("Notice").

Form 211 (the "OTC market") immediately prior to the initial pricing. Accordingly, the Exchange has authority to declare a regulatory halt for any initial listing that is not a transfer from either another national securities exchange or the OTC market. Regulatory halts under the rule terminate when the assigned Designated Market Maker ("DMM") opens the security.

The Exchange has proposed to delete the clause "or traded in the over-the-counter market pursuant to FINRA Form 211" in NYSE Rule 123D(d). The proposed amendment would thus enable the Exchange to declare a regulatory halt for a security that is having its initial listing on the Exchange and that was traded in the OTC market immediately prior to its initial pricing on the Exchange.

The Exchange notes that, although an OTC market security that will be listed on a primary listing exchange will be removed from the OTC trading list on the day before its initial pricing on the exchange, on the day of its initial listing, that security can trade on an unlisted trading privileges ("UTP") basis before the first transaction on the primary listing exchange. The Exchange states that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would avoid potential price disparities or anomalies that may occur during any UTP trading before the first transaction on the primary listing exchange. The Exchange states that quoting and trading in the pre-market of an OTC transfer can be erratic and that investors may be harmed if their securities trade during this period. The Exchange asserts that the proposed limited authority to declare a regulatory halt in the hours prior to the OTC transfer's initial pricing on the Exchange would mitigate any potential price disparities and contribute to a fair and orderly market once the security opens on the Exchange and would be consistent with the protection of investors and the public interest.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] 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, and that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that extending the authority of the Exchange to declare a regulatory trading halt prior to the initial pricing on the Exchange of securities that were previously traded in the OTC market is consistent with the Act because it is reasonably designed to address any potential price disparities or anomalies that may occur during UTP trading before the first transaction on the Exchange. The Commission notes that this regulatory halt would be terminated when the DMM opens the security, and would be for the limited purpose of precluding other markets from trading the security until the Exchange has completed the initial pricing process. The Commission believes this proposed change is reasonably designed to facilitate the initial opening by the DMM and thereby promote fair and orderly markets and the protection of investors.

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4 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR-NYSE-2019-32) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman
Deputy Secretary

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6 15 U.S.C. 78s(b)(2).

7 17 CFR 200.30-3(a)(12).

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