

Required fields are shown with yellow backgrounds and asterisks.

Filing by New York Stock Exchange LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposes new Section 312.03T of the NYSE Listed Company Manual

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * John Last Name * Carey

Title * Senior Director, NYSE Group Inc.

E-mail * John.Carey@theice.com

Telephone * (212) 656-5640 Fax (212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 05/13/2020 Associate General Counsel

By Clare Saperstein

Clare Saperstein,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes new Section 312.03T of the NYSE Listed Company Manual (the “Manual”) to provide a temporary exception through June 30, 2020 from the application of certain of the shareholder approval requirements set forth in Sections 312.03 and 303A.08 of the Manual.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

John Carey
Senior Director
NYSE Group, Inc.
(212) 656-5640

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

- (a) Purpose

The Exchange proposes new Section 312.03T of the Manual to provide a temporary exception through June 30, 2020 from the application of certain of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

shareholder approval requirements under Sections 312.03 and 303A.08 as described below.

The U.S. and global economies have experienced unprecedented disruption as a result of the ongoing spread of COVID-19, including severe limitations on companies' ability to operate their businesses, dramatic market declines and volatility in the U.S. and global equity markets, and severe disruption in the credit markets. Many listed companies are experiencing urgent liquidity needs during this period of crisis due to lost revenues and maturing debt obligations. In these circumstances, listed companies frequently need to access additional capital that may not be available in the public equity or credit markets.

In response to this unprecedented emergency and to facilitate companies in quickly accessing necessary capital, the Exchange proposes to temporarily modify certain of its shareholder approval requirements for share issuances.³ Specifically, the Exchange proposes to adopt Section 312.03T to provide a limited temporary, exception to the shareholder approval requirements in Section (c)⁴

³ The Exchange waived certain of the requirements under Section 312.03 through June 30, 2020 pursuant to an earlier rule filing. Specifically, the Exchange waived: (i) the provision in Section 312.03(b) limiting a Related Party or other purchaser affiliated with a Related Party to purchasing securities representing no more than 5% of the company's then-outstanding shares or 5% of the company's voting power before the issuance in a transaction meeting the Minimum Price Test; and (ii) certain of the requirements for meeting the Bona Fide Financing exception to Section 312.03(c) (i.e., the requirements that there must be multiple purchasers in the transaction and that no purchaser may acquire securities representing more than 5% of the company's then-outstanding shares or 5% of its voting power before the issuance). See Exchange Act Release No. 34-88572 (April 6, 2020); 85 FR 20323 (April 10, 2020) (SR-NYSE-2020-30).

⁴ Section 312.03(c) requires 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 percent 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 percent 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.

However, shareholder approval will not be required for any such issuance involving:

- any public offering for cash;
- any bona fide private financing, if such financing involves a sale of:

and, in certain narrow circumstances, a limited exception to 312.03(b)⁵ and the requirements with respect to equity compensation set forth in Sections 312.03(a) and 303A.08 of the Manual.⁶

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- common stock, for cash, at a price at least as great as the Minimum Price; or
 - securities convertible into or exercisable for common stock, for cash, if the conversion or exercise price is at least as great as the Minimum Price.

Section 312.04(i) defines the Minimum Price as follows:

Minimum Price” means 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(j) defines the Official Closing Price as follows:

“Official Closing Price” of the issuer's common stock means the official closing price on the 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.

⁵ Section 312.03(b) of the Manual requires 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, to:

- (1) a director, officer or substantial security holder of the company (each a "Related Party");
- (2) a subsidiary, affiliate or other closely-related person of a Related Party; or
- (3) any company or entity in which a Related Party has a substantial direct or indirect interest;

if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.

However, if the Related Party involved in the transaction is classified as such solely because such person is a substantial security holder, and if the issuance relates to a sale of stock for cash at a price at least as great as the Minimum Price, then shareholder approval will not be required unless the number of shares of common stock to be issued, or unless the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

Difficulties Posed by Shareholder Approval Requirements in Current Crisis

One unavoidable consequence of the actions being taken to reduce the spread of COVID-19 is a reduction, or complete interruption, in revenue for many companies. For example, many communities have mandated that all restaurants and entertainment facilities close for a period of time. Similarly, companies in the travel sector have seen significant declines in bookings even if they are allowed to continue to operate. Thus, these businesses have no or greatly reduced revenue to offset the operating costs or increased costs associated with the crisis. As such, investors may be reluctant to enter into new equity transactions, unless they are compensated for the risk through discounts to the trading price of a security, and companies may be forced by current circumstances to raise money through equity financings that require shareholder approval under the Exchange's rules. At the same time, other companies have sudden, unexpected cash needs as they undertake new or accelerated initiatives designed to address the loss of business and supply shortages caused by COVID-19.

While an exception is currently available under Section 312.05 of the Manual for companies in financial distress where the delay in securing stockholder approval would seriously jeopardize the financial viability of the company, that exception is not helpful in most situations arising from the COVID-19 pandemic.⁷ For example, while a company may need additional cash so that it can continue to pay employees during a period of decreased or no revenue, the company's viability

Section 312.03(b) includes an exemption for companies that meet the Exchange's definition of an Early Stage Company.

⁶ Section 303A.08 requires shareholder approval, with certain exceptions, prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants. Section 312.03(a) incorporates the requirements of Section 303A.08 into Section 312.03.

⁷ Section 312.05 provides as follows:

Exceptions may be made to the shareholder approval policy in Para. 312.03 upon application to the Exchange when (1) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and (2) reliance by the company on this exception is expressly approved by the Audit Committee of the Board.

A company relying on this exception must mail to all shareholders not later than 10 days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required under the policy of the Exchange and indicating that the Audit Committee of the Board has expressly approved the exception.

may not otherwise be in jeopardy. Further, the accelerated need for funds, as well as the significantly curtailed operations of many businesses, may make impractical the requirement to mail notice to all shareholders.

Proposed COVID-19 Exception

In light of the difficulties experienced by certain listed companies during the current crisis, the Exchange proposes a limited, temporary exception from the shareholder approval requirements in Section 312.03(c), accompanied, in certain narrow circumstances, by a limited exception from Sections 312.03(a) and (b) and Section 303A.08. This proposed exception in Section 312.03T would be available until and including June 30, 2020. To rely on this exception, the company must submit the related supplemental listing application and certification pursuant to Section 312.03T(b)(5)(A) (as described below) and obtain the Exchange's approval of its utilization of the exception pursuant to Section 312.03T(b)(5)(B) (as described below) and thereafter sign a binding agreement no later than June 30, 2020. If the company satisfies such conditions, the issuance of the securities governed by such agreement in reliance on the exception in Section 312.03T may occur after June 30, 2020, provided the issuance takes place no later than 30 calendar days following the date of the binding agreement. If the company does not issue securities within 30 calendar days, as described above, it may no longer rely on the exception in Section 312.03T.

Under proposed Section 312.03T, the exception would be limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its pre-COVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. In addition to demonstrating that the transaction meets one of the foregoing requirements, the company would have to demonstrate to the Exchange that the need for the transaction is due to circumstances related to COVID-19, that the proceeds would not be used to fund any acquisition transaction, and that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The Exchange also proposes, similar to the requirement for the financial viability exception, to require that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception. The Exchange also proposes to require such committee or a comparable committee comprised solely of independent, disinterested directors to determine that the transaction is in the best interest of shareholders.⁸

⁸ The Exchange notes that the proposed relief will not override any requirements arising under applicable laws or a company's own governance documents that would otherwise require a company to obtain shareholder approval for a transaction.

The company must submit a supplemental listing application as required by Section 703.01(part one)(A) in relation to the applicable transaction along with a certification to the Exchange that it complies with all requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable) and describing with specificity how it complies. In such certification, the Exchange expects such company to describe with specificity how it complies with Section 312.03T(b) and (c), if applicable. The Exchange must approve all transactions by countersigned application in advance of any issuance of securities in reliance on Section 312.03T and such approval of a company's reliance on the exception will be based on a review of whether the company has established that it complies with the requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable). Given the fact that the Exchange must undertake a detailed review before approving any use of this exception, the Exchange advises companies to commence discussions with the Exchange and provide the required documentation as far in advance of the proposed transaction as is possible.

Section 312.03T(e) will provide that issuances pursuant to Section 312.03T must comply with all other requirements of applicable Exchange rules, except as provided for therein. Such requirements include the shareholder approval requirements in Sections 312.03(b) and (c) in relation to issuances other than sales of securities for cash, the change of control provision of Section 312.03(d) and the equity compensation requirements set forth in sections 312.03(a) and 303A.08 subject to the limited exceptions set forth therein. In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions.

To provide shareholders with advance notice of the transaction, the Exchange proposes Section 312.03T(d), which would require a company relying on the proposed exception to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing as promptly as possible, but no later than two business days before the issuance of the securities:

- the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received);
- that shareholder approval would ordinarily be required under Exchange shareholder approval rules; and
- that the audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approved reliance on the

exception and determined that the transaction is in the best interest of shareholders.⁹

In addition to the limitations on issuances to related parties set forth in Section 312.03(b), the Exchange has long interpreted Section 303A.08 to require shareholder approval for certain sales to officers, directors, employees, or consultants when such issuances could be considered a form of “equity compensation.” The Exchange has heard from market participants that investors often require a company’s senior management to put their personal capital at risk and participate in a capital raising transaction alongside the unaffiliated investors. The Exchange believes that as a result of uncertainty related to the ongoing spread of the COVID-19 virus, listed companies seeking to raise capital may face such requests. Accordingly, the Exchange proposes that the temporary exception allow such investments under limited circumstances.

To that end, the Exchange proposes Section 312.03T(c), which would provide for an exception from shareholder approval under Sections 312.03(b) and Sections 312.03(a) and 303A.08 for participation in the transaction described in Section 312.03T(b) by any person whose participation would otherwise be subject to shareholder approval under Section 312.03(b) or Sections 312.03(a) and 303A.08 (an “Affiliated Purchaser”), provided the Affiliated Purchaser’s participation in the transaction was specifically required by unaffiliated investors. In addition, to further protect against self-dealing, proposed Section 312.03T(c) would limit such participation to a *de-minimis* level – each Affiliated Purchaser’s participation must be less than 5% of the transaction and all Affiliated Purchasers’ participation collectively must be less than 10% of the transaction. Finally, any Affiliated Purchaser investing in the transaction must not have participated in negotiating the economic terms of the transaction.

Finally, the Exchange proposes to aggregate issuances of securities in reliance on the exception in Section 312.03T with any subsequent issuance by the company, other than a public offering for cash, at a discount to the Minimum Price¹⁰ if the binding agreement governing the subsequent issuance is executed within 90 days of the prior issuance. Accordingly, if, following the subsequent issuance, the aggregate issuance (including shares issued in reliance on the exception) equals or exceeds 20% of the total shares or the voting power outstanding before the initial issuance, then shareholder approval would be required under Section 312.03(c) before the issuance can occur.

(b) Statutory Basis

⁹ See Section 312.05 requiring similar disclosure, for a transaction for which a company relied on the financial viability exception, alerting shareholders to the omission to seek the shareholder approval that would otherwise be required.

¹⁰ See footnote 5 supra for the definition of Minimum Price.

The proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, 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 the public interest and the interests of investors, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. As a result of uncertainty related to the ongoing spread of the COVID-19 virus, the prices of securities listed on U.S. exchanges are experiencing significant volatility. The Exchange believes that the proposed rule change is designed to remove an impediment to companies addressing certain immediate capital needs as a result of the COVID-19 pandemic and reduce uncertainty regarding the ability of companies to raise money quickly through equity financings during the current highly unusual market conditions and general economic disruptions. The Exchange believes that in this way, the proposed rule change will protect investors, facilitate transactions in securities, and remove an impediment to a free and open market. All companies listed on the Exchange would be eligible to take advantage of the proposed rule.

In addition, the Exchange believes the proposed rule change is designed to protect investors by limiting the exception from the shareholder approval requirements to situations where the need for the transaction is due to circumstances related to COVID-19 and the proceeds will not be used to fund any acquisition transactions that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The exception is also limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its preCOVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. Further, the proposed rule requires that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception and determine that the transaction is in the best interest of shareholders.

Notwithstanding the proposed exception from certain shareholder approval requirements, as described above, important investor protections will remain as the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Section 312.03(a) and Section 303A.08 (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), transactions other than sales of securities for cash under Sections 312.03(b) and (c) and a

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

change of control under Section 312.03(d). In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions.

Finally, the Exchange notes that the proposed rule is a temporary exception from certain shareholder approval requirements, as described above, operative through, and including, June 30, 2020

4. 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 not necessary or appropriate in furtherance of the purposes of the Act. All companies listed on the Exchange would be eligible to take advantage of the proposed rule. In addition, the proposed rule change is not designed to have any effect on intermarket competition but instead seeks to address concerns the Exchange has observed surrounding the application of the shareholder approval requirements, as described above, to companies listed on the Exchange. Other exchanges can craft relief based on their own rules and observations.¹³

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange believes that the proposed rule change qualifies for immediate effectiveness upon filing as a “non-controversial” rule change in accordance with Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6), thereunder.¹⁵

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days

¹³ Nasdaq has already adopted relief under its comparable shareholder approval requirements. See SR-NASDAQ-2020-025.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with 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, or such shorter time as the Commission may designate.

The Exchange believes that the proposed rule change will not significantly affect the protection of investors or the public interest because it is designed to reduce uncertainty for certain companies and their shareholders regarding the ability of the companies to raise necessary capital quickly during the current highly unusual market and economic conditions. The proposed change is designed to respond to the unprecedented uncertainty and ongoing revenue disruptions some companies are experiencing as well as the resulting market decline related to the global spread of the COVID-19 virus.

In addition, the Exchange believes the proposed rule change is designed to protect investors by limiting the exception from the shareholder approval requirements to situations where the need for the transaction is due to circumstances related to COVID-19 and the proceeds will not be used to fund any acquisition transactions and that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The exception is also limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its preCOVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. Further, the proposed rule requires that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception and determine that the transaction is in the best interest of shareholders. The Exchange also notes that the proposed rule is a temporary exception from certain shareholder approval requirements, as described above, operative through, and including, June 30, 2020.

Notwithstanding the proposed exception from certain shareholder approval requirements, as described above, important investor protections will remain as the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Sections 312.03(a) and 303A.08 (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), transactions other than sales of securities for cash under Sections 312.03(b) and (c) and a change of control under Section 312.03(d). In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions. The Exchange believes that the proposed rule change will not impose any significant burden on competition because it is designed to reduce uncertainty for

certain companies and their shareholders regarding the ability of the companies to raise necessary capital quickly during the current highly unusual market and economic conditions.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

At any time within 60 days of the filing of the 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 to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii), so that this temporary rule can take effect immediately, removing any uncertainty for listed companies and their investors that would benefit from the relief so that companies can raise capital quickly in view of their reduced revenue.

The waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the exception from the shareholder approval requirements is limited to situations where the need for the transaction is due to circumstances related to COVID-19 and the proceeds will not be used to fund any acquisition transactions and that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The exception is also limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its pre-COVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. Further, the proposed rule requires that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception and determine that the transaction is in the best interest of shareholders.

The Exchange also notes that the proposed rule is a temporary exception from certain shareholder approval requirements, as described above, operative through,

and including, June 30, 2020. Notwithstanding the proposed exception from certain shareholder approval requirements, as described above, important investor protections will remain as the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Sections 312.02(a) and 303A.08 (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), transactions other than sales of securities for cash under Sections 312.03(b) and (c) and a change of control under Section 312.03(d). In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions.

The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would allow companies to quickly raise money through equity financings to maintain operations, avoid jeopardizing its financial viability, compensate its workforce, or undertake new initiatives in response to COVID-19 during the current highly unusual market and economic conditions, and given the ongoing uncertainty relating to the global spread of the COVID-19 virus.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on Nasdaq Marketplace Rule 5636T.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of the proposed rule change

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSE-2020-43)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for New Section 312.03T of the NYSE Listed Company Manual

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on May 13, 2020, 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 new Section 312.03T of the NYSE Listed Company Manual (the “Manual”) to provide a temporary exception through June 30, 2020 from the application of certain of the shareholder approval requirements set forth in Sections 312.03 and 303A.08 of the Manual. 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 new Section 312.03T of the Manual to provide a temporary exception through June 30, 2020 from the application of certain of the shareholder approval requirements under Sections 312.03 and 303A.08 as described below.

The U.S. and global economies have experienced unprecedented disruption as a result of the ongoing spread of COVID-19, including severe limitations on companies' ability to operate their businesses, dramatic market declines and volatility in the U.S. and global equity markets, and severe disruption in the credit markets. Many listed companies are experiencing urgent liquidity needs during this period of crisis due to lost revenues and maturing debt obligations. In these circumstances, listed companies frequently need to access additional capital that may not be available in the public equity or credit markets.

In response to this unprecedented emergency and to facilitate companies in quickly accessing necessary capital, the Exchange proposes to temporarily modify certain of its shareholder approval requirements for share issuances.⁴ Specifically, the Exchange proposes to adopt Section 312.03T to provide a limited temporary, exception to the shareholder approval requirements in Section (c)⁵ and, in certain narrow circumstances, a

⁴ The Exchange waived certain of the requirements under Section 312.03 through June 30, 2020 pursuant to an earlier rule filing. Specifically, the Exchange waived: (i) the provision in Section 312.03(b) limiting a Related Party or other purchaser affiliated with a Related Party to purchasing securities representing no more than 5% of the company's then-outstanding shares or 5% of the company's voting power before the issuance in a transaction meeting the Minimum Price Test; and (ii) certain of the requirements for meeting the Bona Fide Financing exception to Section 312.03(c) (i.e., the requirements that there must be multiple purchasers in the transaction and that no purchaser may acquire securities representing more than 5% of the company's then-outstanding shares or 5% of its voting power before the issuance). See Exchange Act Release No. 34-88572 (April 6, 2020); 85 FR 20323 (April 10, 2020) (SR-NYSE-2020-30).

⁵ Section 312.03(c) requires 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 percent 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 percent 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.

However, shareholder approval will not be required for any such issuance involving:

- any public offering for cash;
- any bona fide private financing, if such financing involves a sale of:
- common stock, for cash, at a price at least as great as the Minimum Price; or
- securities convertible into or exercisable for common stock, for cash, if the conversion or exercise price is at least as great as the Minimum Price.

Section 312.04(i) defines the Minimum Price as follows:

Minimum Price" means a price that is the lower of: (i) the Official Closing Price

limited exception to 312.03(b)⁶ and the requirements with respect to equity compensation set forth in Sections 312.03(a) and 303A.08 of the Manual.⁷

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(j) defines the Official Closing Price as follows:

“Official Closing Price” of the issuer's common stock means the official closing price on the 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.

⁶ Section 312.03(b) of the Manual requires 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, to:

- (1) a director, officer or substantial security holder of the company (each a "Related Party");
- (2) a subsidiary, affiliate or other closely-related person of a Related Party; or
- (3) any company or entity in which a Related Party has a substantial direct or indirect interest;

if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.

However, if the Related Party involved in the transaction is classified as such solely because such person is a substantial security holder, and if the issuance relates to a sale of stock for cash at a price at least as great as the Minimum Price, then shareholder approval will not be required unless the number of shares of common stock to be issued, or unless the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

Section 312.03(b) includes an exemption for companies that meet the Exchange's definition of an Early Stage Company.

⁷ Section 303A.08 requires shareholder approval, with certain exceptions, prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or

Difficulties Posed by Shareholder Approval Requirements in Current Crisis

One unavoidable consequence of the actions being taken to reduce the spread of COVID-19 is a reduction, or complete interruption, in revenue for many companies. For example, many communities have mandated that all restaurants and entertainment facilities close for a period of time. Similarly, companies in the travel sector have seen significant declines in bookings even if they are allowed to continue to operate. Thus, these businesses have no or greatly reduced revenue to offset the operating costs or increased costs associated with the crisis. As such, investors may be reluctant to enter into new equity transactions, unless they are compensated for the risk through discounts to the trading price of a security, and companies may be forced by current circumstances to raise money through equity financings that require shareholder approval under the Exchange's rules. At the same time, other companies have sudden, unexpected cash needs as they undertake new or accelerated initiatives designed to address the loss of business and supply shortages caused by COVID-19.

While an exception is currently available under Section 312.05 of the Manual for companies in financial distress where the delay in securing stockholder approval would seriously jeopardize the financial viability of the company, that exception is not helpful in most situations arising from the COVID-19 pandemic.⁸ For example, while a company

materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants. Section 312.03(a) incorporates the requirements of Section 303A.08 into Section 312.03.

⁸ Section 312.05 provides as follows:

Exceptions may be made to the shareholder approval policy in Para. 312.03 upon application to the Exchange when (1) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and (2) reliance by the company on this exception is expressly approved by the Audit Committee of the Board.

may need additional cash so that it can continue to pay employees during a period of decreased or no revenue, the company's viability may not otherwise be in jeopardy. Further, the accelerated need for funds, as well as the significantly curtailed operations of many businesses, may make impractical the requirement to mail notice to all shareholders.

Proposed COVID-19 Exception

In light of the difficulties experienced by certain listed companies during the current crisis, the Exchange proposes a limited, temporary exception from the shareholder approval requirements in Section 312.03(c), accompanied, in certain narrow circumstances, by a limited exception from Sections 312.03(a) and (b) and Section 303A.08. This proposed exception in Section 312.03T would be available until and including June 30, 2020. To rely on this exception, the company must submit the related supplemental listing application and certification pursuant to Section 312.03T(b)(5)(A) (as described below) and obtain the Exchange's approval of its utilization of the exception pursuant to Section 312.03T(b)(5)(B) (as described below) and thereafter sign a binding agreement no later than June 30, 2020. If the company satisfies such conditions, the issuance of the securities governed by such agreement in reliance on the exception in Section 312.03T may occur after June 30, 2020, provided the issuance takes place no later than 30 calendar days following the date of the binding agreement. If the company does not issue securities within 30 calendar days, as described above, it may no

A company relying on this exception must mail to all shareholders not later than 10 days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required under the policy of the Exchange and indicating that the Audit Committee of the Board has expressly approved the exception.

longer rely on the exception in Section 312.03T.

Under proposed Section 312.03T, the exception would be limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its pre-COVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. In addition to demonstrating that the transaction meets one of the foregoing requirements, the company would have to demonstrate to the Exchange that the need for the transaction is due to circumstances related to COVID-19, that the proceeds would not be used to fund any acquisition transaction, and that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The Exchange also proposes, similar to the requirement for the financial viability exception, to require that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception. The Exchange also proposes to require such committee or a comparable committee comprised solely of independent, disinterested directors to determine that the transaction is in the best interest of shareholders.⁹

The company must submit a supplemental listing application as required by Section 703.01(part one)(A) in relation to the applicable transaction along with a certification to the Exchange that it complies with all requirements of Section 312.03T(b)

⁹ The Exchange notes that the proposed relief will not override any requirements arising under applicable laws or a company's own governance documents that would otherwise require a company to obtain shareholder approval for a transaction.

(and Section 312.03T(c) if applicable) and describing with specificity how it complies. In such certification, the Exchange expects such company to describe with specificity how it complies with Section 312.03T(b) and (c), if applicable. The Exchange must approve all transactions by countersigned application in advance of any issuance of securities in reliance on Section 312.03T and such approval of a company's reliance on the exception will be based on a review of whether the company has established that it complies with the requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable). Given the fact that the Exchange must undertake a detailed review before approving any use of this exception, the Exchange advises companies to commence discussions with the Exchange and provide the required documentation as far in advance of the proposed transaction as is possible.

Section 312.03T(e) will provide that issuances pursuant to Section 312.03T must comply with all other requirements of applicable Exchange rules, except as provided for therein. Such requirements include the shareholder approval requirements in Sections 312.03(b) and (c) in relation to issuances other than sales of securities for cash, the change of control provision of Section 312.03(d) and the equity compensation requirements set forth in sections 312.03(a) and 303A.08 subject to the limited exceptions set forth therein. In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions.

To provide shareholders with advance notice of the transaction, the Exchange proposes Section 312.03T(d), which would require a company relying on the proposed exception to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing as promptly as possible, but no later than

two business days before the issuance of the securities:

- the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received);
- that shareholder approval would ordinarily be required under Exchange shareholder approval rules; and
- that the audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approved reliance on the exception and determined that the transaction is in the best interest of shareholders.¹⁰

In addition to the limitations on issuances to related parties set forth in Section 312.03(b), the Exchange has long interpreted Section 303A.08 to require shareholder approval for certain sales to officers, directors, employees, or consultants when such issuances could be considered a form of “equity compensation.” The Exchange has heard from market participants that investors often require a company’s senior management to put their personal capital at risk and participate in a capital raising transaction alongside the unaffiliated investors. The Exchange believes that as a result of uncertainty related to the ongoing spread of the COVID-19 virus, listed companies seeking to raise capital may face such requests. Accordingly, the Exchange proposes that the temporary exception allow such investments under limited circumstances.

To that end, the Exchange proposes Section 312.03T(c), which would provide for an exception from shareholder approval under Sections 312.03(b) and Sections 312.03(a)

¹⁰ See Section 312.05 requiring similar disclosure, for a transaction for which a company relied on the financial viability exception, alerting shareholders to the omission to seek the shareholder approval that would otherwise be required.

and 303A.08 for participation in the transaction described in Section 312.03T(b) by any person whose participation would otherwise be subject to shareholder approval under Section 312.03(b) or Sections 312.03(a) and 303A.08 (an “Affiliated Purchaser”), provided the Affiliated Purchaser’s participation in the transaction was specifically required by unaffiliated investors. In addition, to further protect against self-dealing, proposed Section 312.03T(c) would limit such participation to a *de-minimis* level – each Affiliated Purchaser’s participation must be less than 5% of the transaction and all Affiliated Purchasers’ participation collectively must be less than 10% of the transaction. Finally, any Affiliated Purchaser investing in the transaction must not have participated in negotiating the economic terms of the transaction.

Finally, the Exchange proposes to aggregate issuances of securities in reliance on the exception in Section 312.03T with any subsequent issuance by the company, other than a public offering for cash, at a discount to the Minimum Price¹¹ if the binding agreement governing the subsequent issuance is executed within 90 days of the prior issuance. Accordingly, if, following the subsequent issuance, the aggregate issuance (including shares issued in reliance on the exception) equals or exceeds 20% of the total shares or the voting power outstanding before the initial issuance, then shareholder approval would be required under Section 312.03(c) before the issuance can occur.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is

¹¹ See footnote 6 supra for the definition of Minimum Price.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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 the public interest and the interests of investors, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. As a result of uncertainty related to the ongoing spread of the COVID-19 virus, the prices of securities listed on U.S. exchanges are experiencing significant volatility. The Exchange believes that the proposed rule change is designed to remove an impediment to companies addressing certain immediate capital needs as a result of the COVID-19 pandemic and reduce uncertainty regarding the ability of companies to raise money quickly through equity financings during the current highly unusual market conditions and general economic disruptions. The Exchange believes that in this way, the proposed rule change will protect investors, facilitate transactions in securities, and remove an impediment to a free and open market. All companies listed on the Exchange would be eligible to take advantage of the proposed rule.

In addition, the Exchange believes the proposed rule change is designed to protect investors by limiting the exception from the shareholder approval requirements to situations where the need for the transaction is due to circumstances related to COVID-19 and the proceeds will not be used to fund any acquisition transactions that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The exception is also limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the

company's ability to maintain operations under its preCOVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. Further, the proposed rule requires that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception and determine that the transaction is in the best interest of shareholders.

Notwithstanding the proposed exception from certain shareholder approval requirements, as described above, important investor protections will remain as the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Section 312.03(a) and Section 303A.08 (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), transactions other than sales of securities for cash under Sections 312.03(b) and (c) and a change of control under Section 312.03(d). In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions.

Finally, the Exchange notes that the proposed rule is a temporary exception from certain shareholder approval requirements, as described above, operative through, and including, June 30, 2020.

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 not necessary or appropriate in furtherance of the purposes of the Act. All companies listed on the Exchange would be eligible to take advantage of the

proposed rule. In addition, the proposed rule change is not designed to have any effect on intermarket competition but instead seeks to address concerns the Exchange has observed surrounding the application of the shareholder approval requirements, as described above, to companies listed on the Exchange. Other exchanges can craft relief based on their own rules and observations.¹⁴

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant 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 Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

¹⁴ Nasdaq has already adopted relief under its comparable shareholder approval requirements. See SR-NASDAQ-2020-025.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),¹⁸ 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.

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)¹⁹ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-43 on the subject line.

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2020-43. 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-2020-43 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.²⁰

Eduardo A. Aleman
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).

Added text underlined;
Deleted text in [brackets].

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Section 312.03T Temporary COVID-19 Exception

(a) This Section 312.03T is operative until, and including, June 30, 2020. To rely on this rule, the company must submit the related supplemental listing application and certification pursuant to Section 312.03T(b)(5)(A) below and obtain the Exchange's approval of its utilization of the exception pursuant to Section 312.03T(b)(5)(B) below and thereafter sign a binding agreement no later than June 30, 2020. The issuance of the securities governed by such agreement may occur after June 30, 2020, provided the issuance takes place no later than 30 calendar days following the date of the binding agreement.

(b) Notwithstanding the requirements of Section 312.03(c), a listed company may issue securities without shareholder approval upon approval by the Exchange of an application demonstrating that the transaction satisfies the following requirements:

(1) the need for the transaction is due to circumstances related to COVID-19 and the proceeds will not be used to fund any acquisition transaction;

(2) the delay in securing shareholder approval would: (A) have a material adverse impact on the company's ability to maintain operations under its pre-COVID-19 business plan; (B) result in workforce reductions; (C) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (D) seriously jeopardize the financial viability of the enterprise;

(3) the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company;

(4) the company's audit committee or a comparable committee comprised solely of independent, disinterested directors (A) expressly approved reliance on this exception; and (B) determined that the transaction is in the best interest of shareholders.

(5) (A) The company must submit a supplemental listing application as required by Section 703.01(part one)(A) in relation to the applicable transaction along with a certification to the Exchange that it complies with all requirements of this Section 312.03T(b) (and Section 312.03T(c) if applicable) and describing with

specificity how it complies; (B) The Exchange must approve all transactions in advance of any issuance of securities in reliance on this Section 312.03T. Such approval of a company's reliance on this exception will be based on a review of whether the company has established that it complies with the requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable).

(c) A transaction described in Section 312.03T(b) will not require shareholder approval under Section 312.03(b) or Sections 312.03(a) and 303A.08, provided that the transaction satisfies the following requirements:

(1) any participation by a Related Party or other person who is subject to Section 312.03(b) or Section 303A.08 (an "Affiliated Purchaser") must be less than 5% of the transaction;

(2) the participation of all Affiliated Purchasers collectively must be less than 10% of the transaction;

(3) the participation of any Affiliated Purchaser must have been specifically required by unaffiliated investors; and

(4) the Affiliated Purchasers must not have participated in negotiating the economic terms of the transaction.

(d) A company that relies on the exception in this Section 312.03T must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release as promptly as possible, but no later than two business days before the issuance of the securities, disclosing:

(1) the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received);

(2) that shareholder approval would ordinarily be required under Exchange rules but for the fact that the company is relying on this temporary exception to the shareholder approval rules; and

(3) that the audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approved reliance on the exception and determined that the transaction is in the best interest of shareholders.

(e) Issuances pursuant to this Section 312.03T must comply with all other requirements of applicable Exchange rules, except as provided for herein.

(f) Other than a public offering for cash, securities issued in reliance on the exception in this Section 312.03T will be aggregated with any subsequent issuance at a discount to the Minimum Price if the binding agreement governing the subsequent issuance is executed

within 90 days of the prior issuance. If, following the subsequent issuance, the aggregate issuance (including shares issued in reliance on the exception) equals or exceeds 20% of the total shares or the voting power outstanding before the initial issuance, then shareholder approval will be required under Section 312.03(c) prior to the subsequent issuance.

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