

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 14

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 53

Amendment No. (req. for Amendments *)

Filing by New York Stock Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

☐

Section 806(e)(2) *

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Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

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

New York Stock Exchange LLC proposes to adopt an amendment to the shareholder voting requirement set forth in Section 312.07 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		
E-mail *	john.carey@nyse.com		
Telephone *	(212) 656-5640	Fax	

Signature

Pursuant to the requirements of the Securities Exchange of 1934, New York Stock Exchange LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 08/24/2021

(Title *)

By Martha Redding

(Name *)

Assistant Secretary

Martha Redding

Digitally signed by Martha Redding
Date: 2021.09.16 14:43:35 -04'00'

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

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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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SR NYSE 2021-53 ex 1.docx

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 Advanced 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 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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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.

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Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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.

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Exhibit Sent As Paper Document

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

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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 to adopt an amendment to the shareholder voting requirement set forth in Section 312.07 of the NYSE Listed Company Manual.

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

- (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

Section 312.07 of the NYSE Listed Company Manual (“Manual”) provides that, where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, or where any matter requires shareholder approval, the minimum vote which will constitute shareholder approval for such purposes is defined as approval by a majority of votes cast on a proposal in a proxy bearing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

on the particular matter. Section 312.07 is currently applicable to shareholder approval of stock issuances under Sections 303A.08 (equity compensation) and 312.03 of the Manual.³

The text of Section 312.07 does not specifically address the treatment of abstentions. However, the Exchange has historically advised companies that abstentions should be treated as votes cast for purposes of Section 312.07. Under that approach, a proposal is deemed approved under Section 312.07 only if the votes in favor of the proposal exceed the aggregate of the votes cast against the proposal plus abstentions. The Exchange has observed that this approach has caused confusion among listed companies. The corporate laws of many states, including Delaware, allow companies to include in their governing documents that votes cast for purposes of a shareholder vote includes yes and no votes (but not abstentions), such that a proposal succeeds if the votes in favor exceed the votes cast against. The Exchange understands that, consistent with those state laws, many public companies have bylaws indicating that abstentions are not treated as votes cast.

The Exchange proposes to amend Section 312.07 to provide that a company must calculate the votes cast with respect to a proposal that is subject to Section 312.07 in accordance with its own governing documents and any applicable state law. The Exchange believes that this treatment of abstentions will avoid any complications engendered among issuers and shareholders when different voting standards are applied under the Exchange rule, a company's governing documents, and/or applicable state laws.

The Exchange notes that Nasdaq has a rule requiring that proposals receive a majority of "the votes cast,"⁴ but is silent on the question as to whether abstentions should be treated as votes cast. Nasdaq has published an FAQ on its website that clearly states:

Nasdaq does not define the term "votes cast". As such, a company must calculate the "votes cast" in accordance with its governing documents and any applicable state law.

(b) Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the

³ Item 21(b) of Schedule 14A requires companies soliciting proxies to disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as the company's charter and bylaw provisions.

⁴ See Nasdaq Marketplace Rule 5635(e)(4).

Securities Exchange Act of 1934 (the “Act”) generally.⁵ Section 6(b)(5)⁶ requires, among other things, that exchange rules are 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, promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers.

The Exchange believes that the proposal is designed to protect the public interest and the interests of investors. The proposed approach to calculations of “votes cast” in Section 312.07 would not prescribe a particular interpretation under Exchange rules. Rather, a listed company would calculate votes cast in accordance with the company’s governing documents and applicable state laws. In doing so, the proposal will reduce confusion among issuers and shareholders. The proposed amendment would also help ensure that shareholders properly understand the implications of choosing to abstain on a proposal subject to approval under Exchange rules.

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

The Exchange does not believe that the proposal would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. There would be no effect on the competition among issuers listed on the NYSE resulting from the proposed amendment, because all issuers would calculate votes cast in accordance with their own governing documents and applicable state laws. The proposed amendment is consistent with the existing interpretation of the comparable rule of the other primary listing exchange, so the proposed amendment would have no effect on the competition for listings among exchanges.

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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

Not applicable.

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

Not applicable.

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

Not applicable.

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 – Proposed Rule Text

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSE-2021-53)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend the Shareholder Voting Requirement Set Forth in Section 312.07 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 September 16, 2021, 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 adopt an amendment to the shareholder voting requirement set forth in Section 312.07 of the NYSE Listed Company 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Section 312.07 of the NYSE Listed Company Manual ("Manual") provides that, where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, or where any matter requires shareholder approval, the minimum vote which will constitute shareholder approval for such purposes is defined as approval by a majority of votes cast on a proposal in a proxy bearing on the particular matter. Section 312.07 is currently applicable to shareholder approval of stock issuances under Sections 303A.08 (equity compensation) and 312.03 of the Manual.⁴

The text of Section 312.07 does not specifically address the treatment of abstentions. However, the Exchange has historically advised companies that abstentions should be treated as votes cast for purposes of Section 312.07. Under that approach, a proposal is deemed approved under Section 312.07 only if the votes in favor of the proposal exceed the aggregate of the votes cast against the proposal plus abstentions. The Exchange has observed that this approach has caused confusion among listed

⁴ Item 21(b) of Schedule 14A requires companies soliciting proxies to disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as the company's charter and bylaw provisions.

companies. The corporate laws of many states, including Delaware, allow companies to include in their governing documents that votes cast for purposes of a shareholder vote includes yes and no votes (but not abstentions), such that a proposal succeeds if the votes in favor exceed the votes cast against. The Exchange understands that, consistent with those state laws, many public companies have bylaws indicating that abstentions are not treated as votes cast.

The Exchange proposes to amend Section 312.07 to provide that a company must calculate the votes cast with respect to a proposal that is subject to Section 312.07 in accordance with its own governing documents and any applicable state law. The Exchange believes that this treatment of abstentions will avoid any complications engendered among issuers and shareholders when different voting standards are applied under the Exchange rule, a company's governing documents, and/or applicable state laws.

The Exchange notes that Nasdaq has a rule requiring that proposals receive a majority of "the votes cast,"⁵ but is silent on the question as to whether abstentions should be treated as votes cast. Nasdaq has published an FAQ on its website that clearly states:

Nasdaq does not define the term "votes cast". As such, a company must calculate the "votes cast" in accordance with its governing documents and any applicable state law.

⁵ See Nasdaq Marketplace Rule 5635(e)(4).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”) generally.⁶ Section 6(b)(5)⁷ requires, among other things, that exchange rules are 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, promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers.

The Exchange believes that the proposal is designed to protect the public interest and the interests of investors. The proposed approach to calculations of “votes cast” in Section 312.07 would not prescribe a particular interpretation under Exchange rules. Rather, a listed company would calculate votes cast in accordance with the company’s governing documents and applicable state laws. In doing so, the proposal will reduce confusion among issuers and shareholders. The proposed amendment would also help ensure that shareholders properly understand the implications of choosing to abstain on a proposal subject to approval under Exchange rules.

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

The Exchange does not believe that the proposal would impose any burden on

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

competition not necessary or appropriate in furtherance of the purposes of the Act. There would be no effect on the competition among issuers listed on the NYSE resulting from the proposed amendment, because all issuers would calculate votes cast in accordance with their own governing documents and applicable state laws. The proposed amendment is consistent with the existing interpretation of the comparable rule of the other primary listing exchange, so the proposed amendment would have no effect on the competition for listings among exchanges.

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. Please include File Number SR-NYSE-2021-53 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-2021-53. 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-2021-53 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.⁸

Eduardo A. Aleman
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Added text underlined;

Deleted text in [brackets]

NYSE Listed Company Manual

* * * * *

312.07 Where Shareholder

Where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, or where any matter requires shareholder approval, the minimum vote which will constitute shareholder approval for such purposes is defined as approval by a majority of votes cast on a proposal in a proxy bearing on the particular matter. For purposes of the foregoing, a company must calculate the votes cast in accordance with its governing documents and any applicable state law.

* * * * *