



March 28, 2018

To: New York Stock Exchange LLC (“NYSE”) Members and Member Organizations

From: NYSE Regulation

Subject: NYSE Rule 15, 104, and 123D Rule Changes Relating to NYSE Direct Listings

The NYSE (the “Exchange”) may list the securities of companies that have not previously had their common equity securities registered under the Securities Exchange Act of 1934 (“Exchange Act”). The Exchange’s listing qualifications recognize that such companies may wish to list their common equity securities on the Exchange at the time a registration statement is effective (an “NYSE Direct Listing”). The registration statement allows existing shareholders of the company to sell their shares.¹ The Exchange recently received Securities and Exchange Commission approval to allow the Exchange to list a company’s common stock upon effectiveness of a registration statement solely on the basis of a recent independent third-party valuation indicating that the company has at least \$250 million in market value of publicly-held shares. This change allows the Exchange to list a company’s securities in the absence of trading on a Private Placement Market,² provided the company is clearly large enough to be suitable for listing on the Exchange.³

In connection with this change to its listing qualifications, the Exchange also changed its Rules 15 and 104 relating to the opening process for an NYSE Direct Listing and amended NYSE Rule 123D to provide the Exchange authority to issue a regulatory halt for a security that has its initial pricing on the Exchange.

NYSE Rule 15

NYSE Rule 15 sets forth the requirements for a pre-opening indication, which is the price range within which the opening price for a security is anticipated to occur. Pre-opening indications are published each morning via the securities information processor (“SIP”) and proprietary data feeds. The Designated Market Maker (“DMM”) assigned to a security is required to publish a pre-opening indication as follows:

¹ Note (E) to Section 102.01B of the NYSE Listed Company Manual (“LCM”).

² A Private Placement Market is defined in Note (E) to Section 102.01B of the LCM as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.

³ See Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (SR-NYSE-2017-30) (Approval Order) (the “NYSE Floor Direct Listing Filing”). Footnote E to Section 102.01B of the LCM sets forth the requirements for a company seeking to list as a NYSE Direct Listing.

- If the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range” from a specified “Reference Price,” the DMM must publish a pre-opening indication before a security opens. Rule 15(d) establishes the Applicable Price Range as 5% for securities with a Reference Price over \$3.00 and as \$0.15 for securities with a Reference Price equal to or lower than \$3.00.⁴
- If a security has not opened by 10:00 a.m. Eastern Time, the DMM must publish a pre-opening indication.

To accommodate NYSE Direct Listings, the Exchange recently received SEC approval for changes to the definition of Reference Price in NYSE Rule 15(c). Accordingly, for purposes of determining whether a DMM is required to publish a pre-opening indication, the Reference Price for a security is:

- for securities already trading on the Exchange, the last reported sale price on the Exchange;
- for IPOs, the offering price;
- for securities transferring from another Exchange, the last reported sale price on the securities market from which the security is being transferred;
- for an NYSE Direct Listing that has had recent sustained trading in a Private Placement Market, the most recent transaction price in that market; or
- for an NYSE Direct Listing for which there has not been sustained trading in a Private Placement Market, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.

NYSE Rule 104

NYSE Rule 104 sets forth the responsibilities and duties of a DMM, including the DMM’s responsibility for facilitating openings and reopenings for each security in which the DMM is registered. In connection with facilitating openings and reopenings, a DMM is required to supply liquidity as needed.

The SEC recently approved changes to Exchange Rule 104(a)(2) to provide that, when facilitating the opening on the first day of trading of an NYSE Direct Listing that has not had recent sustained history of trading in a Private Placement Market prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security. The requirement to consult with a financial advisor to the issuer is thus required only if there is not a sustained history of trading in a Private Placement Market.

NYSE Rule 123D

Sections 202.06 and 202.07 of the LCM set forth the Exchange’s procedures for when trading in a listed security should be halted or delayed, i.e., a regulatory halt. The SEC recently approved new sub-paragraph (d) of Exchange Rule 123D to allow the Exchange to declare a regulatory halt in a

⁴ The Applicable Price Range is doubled if, as of 9:00 a.m. Eastern Time, the E-mini S&P Futures are +/- 2% from the prior day’s closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide circuit breaker halt, or if the Exchange determines it is necessary or appropriate for the maintenance of a fair and orderly market.

security that is the subject of an initial pricing on the Exchange if that security has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing. The Exchange may declare such an Initial Listing Regulatory Halt for NYSE Direct Listings and other initial listings on the Exchange, such as spin-offs, mergers that result in the creation of a new company, or companies emerging from bankruptcy that create a new security.

This regulatory halt condition will be terminated when the DMM opens the security. The NYSE would declare such a regulatory halt before 4:00 a.m. Eastern Time, which would mean that there would be no trading in this stock on other exchanges or in over-the-counter trading until the DMM opens the security on either a quote or a trade.

Rule Text Changes

The following are the changes that were made to Rules 15, 104, and 123D in connection with the NYSE Direct Listing Filing. New text is underlined, and deleted text is bracketed.

Rule 15. Pre-Opening Indications and Opening Order Imbalance Information

(c) *Reference Price.*

- (1) The Reference Price for a security, other than an American Depositary Receipt ("ADR"), will be:
 - (A) the security's last reported sale price on the Exchange;
 - (B) the security's offering price in the case of an initial public offering ("IPO"); [or]
 - (C) the security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange ("transferred security")[.]; or
 - (D) for a security that is listed under Footnote (E) to Section 102.01B of the Listed Company Manual that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.

Rule 104. Dealings and Responsibilities of DMMs

(a) DMMs registered in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. The responsibilities and duties of a DMM specifically include, but are not limited to, the following:

- (2) Facilitate openings and reopenings, including the Midday Auction, for each of the securities in which the DMM is registered as required under Exchange rules. This may include supplying liquidity as needed. (See Rule 123D for additional responsibilities of DMMs with respect to openings and Rule 13 with respect to Reserve Order interest

procedures at the opening.) DMM and DMM unit algorithms will have access to aggregate order information in order to comply with this requirement. (See Supplementary Material .05 of this 104 with respect to odd-lot order information to the DMM unit algorithm.) When facilitating the opening on the first day of trading of a security that is listed under Footnote (E) to Section 102.01B of Listed Company Manual and that has not had recent sustained history of trading in a Private Placement Market prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.

Rule 123D. Openings and Halts in Trading

(d) Initial Listing Regulatory Halt. The Exchange may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing. This regulatory halt will be terminated when the DMM opens the security.

(e) Equipment Changeover.—The Exchange has established a non-regulatory trading halt condition designated as "Equipment Changeover".

This condition may be used when trading in a particular security is temporarily inhibited due to a systems, equipment or communications facility problem or for other technical reasons.

In making a determination on whether to halt trading in a security because of an "Equipment Changeover" condition, it is important to keep in mind that once halted, trading cannot be resumed for at least one minute even though, in many cases, the systems or equipment problem may be corrected in a much shorter period of time. Further, if, during the "Equipment Changeover" trading halt, a pre-opening indication would be required to be published or a regulatory condition occurs, the nature of the halt will be changed, notice must be disseminated and trading cannot resume until three minutes after the first indication after the new halt condition. This factor should be taken into consideration along with market condition factors in making a determination on whether to declare an official trading halt.

All other policies relating to nonregulatory halts would apply including price indications.
