public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 email to rule-comments@sec.gov. Please include File Number SR–MSRB–2015–06 on the subject line.

Paper Comments
- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. All submissions should refer to File Number SR–MSRB–2015–06. This file number should be included on the subject line if email 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 Web site (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 Web site 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 MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2015–06 and should be submitted on or before August 31, 2015.

For the Commission, pursuant to delegated authority, 6
Robert W. Errett, Deputy Secretary.

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BILLING CODE 8011–01–P

SEcurities and EXChange COMMISSION


SELF-REGULATORY ORGANIZATIONS; NEW YORK STOCK EXCHANGE LLC; ORDER INSTITUTING PROCEEDINGS TO DETERMINE WHETHER TO DISAPPROVE PROPOSED RULE CHANGE AMENDING SECTIONS 312.03(b) AND 312.04 OF THE NYSE LISTED COMPANY MANUAL TO EXEMPT EARLY STAGE COMPANIES FROM HAVING TO OBTAIN SHAREHOLDER APPROVAL BEFORE ISSUING SHARES FOR CASH TO RELATED PARTIES, AFFILIATES OF RELATED PARTIES OR ENTITIES IN WHICH A RELATED PARTY HAS A SUBSTANTIAL INTEREST

August 4, 2015.

I. Introduction

On April 16, 2015, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) 7 and Rule 19b–4 thereunder, 8 a proposed rule change to exempt early stage companies from having to obtain shareholder approval before issuing shares to related parties, affiliates of related parties or entities in which a related party has a substantial interest. The proposed rule change was published for comment in the Federal Register on May 6, 2015. 9 The Commission received no comment letters on the proposal. On June 18, 2015, the Commission designated a longer period for Commission action on the proposed rule change, until August 4, 2015. 10 This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Sections 312.03(b) and 312.04 of the NYSE Listed Company Manual (“Manual”) to provide an exemption to an “early stage company” listed on the Exchange from having to obtain shareholder approval, under certain circumstances, before issuing shares of common stock, or securities convertible into or exercisable for common stock, to a (1) director, officer 6 or substantial security holder 7 of the company (“Related Party” or “Related Parties”), (2) subsidiary, affiliate or closely-related person of a Related Party or (3) company or entity in which a Related Party has a substantial direct or indirect interest (together, a “Proposed Exempted Party” or “Proposed Exempted Parties”). 9 In particular, shareholder approval would no longer be required for an “early stage company,” 9 before the issuance of shares for cash to a Proposed Exempted Party, provided that the company’s audit committee or a comparable committee comprised solely of independent directors reviews and approves of all such transactions prior to their completion. Today, shareholder approval would be required prior to the issuance of shares, among other things, where the number of shares to be issued is to the Proposed Exempted Party exceeds either 1% of the number of shares of common stock or 1% of the voting power outstanding before the issuance (or 5% of the number of shares or voting power, if the Related Party is classified as such solely because it is a substantial security holder, and the issuance relates to a sale of stock for cash, at a price at least as great as each of the book and market value of the company’s common stock). 10

6 Section 312.04(h) of the Manual states that the term “officer” has the same meaning as defined by the Commission in Rule 16a–1(i) under the Act.
7 Section 312.04(e) of the Manual states that an interest consisting of less than either 5% percent of the number of shares of common stock or 5% of the voting power outstanding of a company or entity shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.
8 The Commission notes that there is an inconsistency between the proposed rule text in Exhibit 5 and the proposed shareholder approval exception discussed in the Notice. The proposed rule text in Exhibit 5 states that the exception only applies to Related Parties, which is defined in Section 312.03(b)(1) of the Manual. However, the Notice clearly states that the proposed rule change is meant to apply to all Proposed Exempted Parties, as set forth in Sections 312.03(b)(1), (2), and (3) of the Manual, not just Related Parties under Section 312.03(b)(1) of the Manual. See Notice, supra note 3, at 26119.
9 See supra notes 11 through 13 and accompanying text.
10 The Exchange states that neither The NASDAQ Stock Market LLC (“NASDAQ”) nor NYSE MKT LLC has a rule comparable to Section 312.03(b) requiring listed companies to obtain shareholder approval prior to 1% or in certain cases 5% share issuances in cash sales to a Proposed Exempted Party. See Notice, supra note 3, at 26120. Thus, the Exchange believes the proposed rule change is necessary to enable the Exchange to compete with...
The Exchange also proposes to amend Section 312.04 to include a definition of the term “early stage company.” The Exchange proposes to define an early stage company as a company that has not reported revenues greater than $20 million in any two consecutive fiscal years since its incorporation. Further, an early stage company would lose that designation at any time after listing on the Exchange. The Exchange also states that only a small number of currently listed companies would qualify under the proposed exemption from shareholder approval provisions of Section 312.03(b) of the Manual. Additionally, the Exchange highlights that under Section 312.04(a) of the Manual, an exemption from one provision of Section 312.03 is not a general exemption from all of Section 312.03. Therefore, notwithstanding that a transaction by an early stage company may have an exemption under the proposed amendments to Sections 312.03(b) of the Manual, the Exchange states that shareholder approval requirements of Sections 312.03(c) and 312.03(d) would still be applicable.

Lastly, the Exchange also proposes to delete obsolete text from Section 312.03 of the Manual related to a limited transition period that is no longer relevant.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2015–02 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be disapproved. Institution of such proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to comment on the proposed rule change to inform the Commission’s analysis whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As discussed above, the Exchange proposes to amend Sections 312.03(b) and 312.04 of the Manual, in order to exempt early stage companies from having to obtain shareholder approval before issuing a substantial amount of shares for cash, even at a discount from book and market value, to Related Parties, namely officers, directors and substantial security holders, as well as the other Proposed Exempted Parties. Although the Exchange conditions its proposed exemption on the company obtaining the approval of the transaction by its audit committee (or comparable committee comprised solely of independent directors), the Commission is concerned that audit committee approval may not be an effective substitute for the approval of shareholders, whose interests would be directly impacted by the potentially dilutive effect of such a transaction. In addition, while the Exchange believes that the proposal would benefit shareholders of early stage companies because it could allow those companies to raise additional capital quickly and inexpensively, any such benefit must be weighed against the potentially detrimental impact of a dilutive transaction on shareholders who would no longer have the right to approve it.

13 See proposed Section 312.04(k) of the Manual.
14 See Notice, supra note 3, at 26120.
15 See Notice, supra note 3, at 26119, n.6. As an example, the Exchanges states that if a company files an annual report with the Commission one year after listing on the Exchange and such annual report shows that the company has had revenues greater than $20 million in each of two consecutive years (even if one of those years was prior to listing on the Exchange), the company would lose its early stage company designation at that time. See id. Moreover, once the early stage company designation is lost, it cannot be regained if the subject company later reports reduced revenues. See id. at 26120.
16 See Notice, supra note 3, at 26119.
The Commission therefore believes that questions are raised as to whether the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, including whether it would be designed to promote just and equitable principles of trade, and protect investors and the public interest.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.24

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be disapproved by August 31, 2015. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by September 14, 2015. The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the statements of the Exchange contained in the Notice, and any other issues raised by the proposed rule change.

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 email to rule-comments@sec.gov. Please include File Number SR–NYSE–2015–02 on the subject line.

Paper Comments
- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–02. This file number should be included on the subject line if email 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 Web site (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 Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; therefore, the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–02 and should be submitted on or before August 31, 2015. Rebuttal comments should be submitted by September 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.26
Robert W. Errett.
Deputy Secretary.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

August 4, 2015.

Pursuant to the provisions of section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on July 30, 2015, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 is filing a proposal to amend the MIAX Options Fee Schedule. The text of the proposed rule change is available on the Exchange’s Web site at http://www.miaxoptions.com/filter/wotttle/rule_filing, at MIAX’s principal office, 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 Exchange 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 these 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 aspects of such statements.