

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68635; File No. SR-NYSE-2012-54)

January 11, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Amending the Listed Company Manual Section 204.00 to Create a Uniform Method for a Company to Provide Notice to the Exchange When Required Pursuant to Sections 204.06, 204.12, 204.17, 204.21, 204.22, 311.01, 401.02, and 601.00 of the Listed Company Manual, and to Make Conforming Changes

I. Introduction

On November 8, 2012, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Section 204.00 of the Listed Company Manual, which sets forth the required procedures that listed companies must follow to notify the Exchange upon the occurrence of certain events, and to amend related provisions of the Manual to make clear which provisions trigger the reporting procedures set forth in amended Section 204.00. The proposed rule changes were published for comment in the Federal Register on November 27, 2012.<sup>3</sup> The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposals

Companies that list their securities on the Exchange are subject to a number of reporting requirements set forth in the Exchange’s Listed Company Manual (“Manual”). The Exchange proposes to amend the methods by which listed companies give notice to the Exchange of

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 68276 (November 20, 2012), 77 FR 70868 (November 27, 2012) (“Notice”).

matters or events where timely notification is essential to the ability of investors to arrange to be holders of a security by a certain date for a distribution or shareholder meeting. These events are: closing of transfer books; notice of dividend action or action relating to a stock distribution; meetings of shareholders, notice of the fixing of a date for the taking of a record of shareholders or for the closing of transfer books; redemption of listed securities; notice of corporate action which will result in, or which looks toward, either the partial or full call for redemption of a listed security; notice of dates set in connection with the calling of any meeting of shareholders; and notice by transfer agents of the number of shares outstanding at the end of each calendar quarter.

Currently, the Manual contains sections governing the notice that listed companies are required to provide the Exchange in case of each of these events; however, these sections set forth either different or no precise method for providing such notice. The following chart summarizes how these various notification provisions currently are addressed in the Manual.

Section	Current Method
204.00 Notice to and Filings with the Exchange (notice in connection with certain actions or events as specified in Sections 204.01 through 204.25)	Notice methods include fax, telephone, telegram, and letter
204.06 Closing of Transfer Books	No method specified
204.12 Dividends and Stock Distributions (notice of dividend action or action relating to a stock distribution)	Notice methods include fax, telephone, telegram, and letter
204.17 Meetings of Shareholders	No method specified
204.21 Record Date (notice of the fixing of a date for the taking of a record of shareholders or for the closing of transfer books)	Notice methods include fax, telephone, telegram, and letter
204.22 Redemption of Listed Securities	No method specified
311.01 Publicity and Notice to the Exchange of Redemption (notice of corporate action which will result in,	Notice methods include fax and telephone

or which looks toward, either the partial or full call for redemption of a listed security)	
401.02 Notice to the Exchange (notice of dates set in connection with the calling of any meeting of shareholders, including changes in record date)	Notice methods include telephone and writing or fax
601.00 Services to be Provided by Transfer Agents and Registrars (notice by transfer agents of the number of shares outstanding at the end of each calendar quarter)	Notice methods include fax and email

The Exchange proposes to create a uniform method that listed companies will use to notify the Exchange of the events identified in the chart above. To do so, the Exchange proposes to set forth the new, uniform method of notification in Section 204.00, and to amend the remaining Sections in the chart above to include an explicit direction to listed companies to follow the amended notification procedures of Section 204.00.

Specifically, the Exchange proposes to amend Section 204.00<sup>4</sup> to provide that, when a provision of the Listed Company Manual requires a company to give notice to the Exchange pursuant to Section 204.00, the company shall provide such notice through a web-based communication system – either a web portal or email address – specified by the Exchange in a prominent position on its website.<sup>5</sup> Should the Exchange ever change the web-based communication system it uses to receive notifications pursuant to Section 204.00, the proposed

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<sup>4</sup> In addition to the proposed substantive amendments to Section 204.00 described in the text, the Exchange proposes to delete the word “written” from the heading for Section 204.00 and from the first sentence of the section. In its filing, the Exchange stated that this technical change is meant to eliminate any potential confusion as to whether notices provided through a web-based communication system constitute “written” notices.

<sup>5</sup> The Exchange noted in its submission that if the filing is approved, it plans to commence receiving the web-based notifications pursuant to Section 204.00 through [www.egovdirect](http://www.egovdirect), a web portal operated by the Exchange, or through an email address designated by the Exchange.

text of Section 204.00 would require the Exchange to promptly update and display the applicable information on its website.<sup>6</sup>

The Exchange also proposes to amend Section 204.00 to address several other scenarios that impact the notifications that companies must provide to the Exchange. First, the amended Section 204.00 would say that, in emergency situations – for instance, lack of computer or internet access, technical problems at the Exchange or company, or incompatibility between Exchange and company systems – companies may provide notifications required pursuant to the Section by telephone and confirmed by facsimile, as specified by the Exchange on its website.<sup>7</sup> Second, amended Section 204.00 would require that, in cases where a material event or a statement dealing with a rumor which calls for immediate release is made shortly before the opening or during market hours, companies must notify the Exchange using the telephone alert procedures set forth in Section 202.06(B) of the Manual.<sup>8</sup> Finally, amended Section 204.00 would clarify that for the remaining notification provisions in the Manual that do not direct

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<sup>6</sup> Additionally, proposed Section 204.00 encourages listed companies to contact their Exchange representatives if they have any questions about the appropriate method of providing notification under applicable Exchange rules.

<sup>7</sup> Again, the Exchange notes that companies are encouraged to contact their Exchange representatives if they have any questions about how to comply with applicable notification requirements.

<sup>8</sup> The telephone alert procedures in Section 202.06(B) require that, when the announcement of news of a material event or a statement dealing with a rumor which calls for immediate release is made shortly before the opening or during market hours, a company must give notice to their Exchange representatives by telephone at least ten minutes prior to the release of the announcement. Section 202.06(B) further requires that when such announcement is in written form, a company must also provide the text of such written announcement to the Exchange at least ten minutes prior to its release. The Exchange proposes to amend Section 202.06(B) to specify that companies should now use the web-based communication system specified in Section 204.00 – *i.e.*, the web portal or designated email address – to transmit the written form of the announcement.

companies specifically to follow the Section’s revised notification methods, companies may use the methods provided for in Section 204.00 or any other reasonable method.

The Exchange explained in its filing the reason why the remaining notification provisions contained in the Manual – the ones not specified in the chart above and subject to the proposed amendments – would not require companies to follow the notification methods set forth in 204.00. According to the Exchange, these remaining provisions found in Sections 204.01 through 204.25 relate to matters about which the Exchange needs to be informed promptly, such as a change in transfer agent or trustee (Section 204.02) or change in auditors (Section 204.03), but a company’s failure to notify the Exchange immediately in the case of these events would not significantly disadvantage investors. As a result, the Exchange does not propose to amend these remaining provisions to require notification pursuant to 204.00; instead, the Exchange believes it is reasonable to afford listed companies more flexibility with respect to how they comply with the remaining notification provisions that do not specifically direct a company to Section 204.00.

In connection with the proposed amendments to the notification methods prescribed in Section 204.00, the Exchange also proposes to revise the “Guide to Requirements for Submitting Data to the Exchange” (“Guide”) which appears in the Introduction to the Listed Company Manual.<sup>9</sup> The Exchange proposes to amend the portion of the Guide summarizing the submission requirements relating to press releases disclosing material corporate events. This part of the Guide is meant to summarize the requirements of the telephone alert policy found in Section 202.06(B), but as it stands now, it states incorrectly that the text of certain written announcements should be conveyed to the Exchange after an announcement is released. The

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<sup>9</sup> In addition to the substantive changes to the Guide described in the text, the Exchange proposes to revise cross-references contained in the Guide so that they refer to a “Section” of the Manual rather than a “Paragraph,” as the Manual is organized in “Sections,” not “Paragraphs.”

Exchange's proposed amendment to this portion of the Guide would conform the summary language used in the Guide to the language of the actual requirement found in Section 202.06(B), which states that the text of certain written announcements must be conveyed to the Exchange at least ten minutes prior to release.

The Exchange also proposes several administrative changes to the Guide. First, it proposes to amend from six to three the number of copies of a proxy statement that a listed company must submit to the Exchange. The reason for the change is that the Exchange has determined that three copies of the proxy statement is sufficient for the Exchange's review purposes, and that the proposed amendment would lessen an administrative burden on listed companies. Second, the Exchange proposes to make changes to the portion of the Guide summarizing the notification requirements for shareholder meetings. The Exchange proposes to change the name of this Item in the Guide from "Shareholders' Meeting/Notice" to "Shareholders' Meeting/Notice of Record Date or Change of Record Date." The Exchange also proposes to revise the description of the "Due Date" for this Item in the Guide, by rewording the description to require notice "[a]t least ten days in advance of record date," instead of "[n]ot later than the tenth day prior to the record date."

Finally, the Exchange proposes to amend Section 311.01 to clarify what method of notification is required when a company's corporate action (or any action of which the company has knowledge) will result in, or looks toward, either the partial or full call for redemption of a listed security. Currently, Section 311.01 contains language in two different places setting forth methods of notification in cases of redemptions, and the language in these two places is potentially in conflict. In the first instance where Section 311.01 prescribes a method of notification, it says that companies must follow the timely disclosure / telephone alert procedures

found in Sections 202.05 and 202.06(B).<sup>10</sup> Later in Section 311.01, there is a second notification directive that requires companies to notify the Exchange of redemptions in writing, delivered by hand if possible, and if immediate hand delivery is not possible, than the company must notify the Exchange of a redemption action by telephone, no later than simultaneously with the release of the information to the newspapers and news wire services, confirmed promptly by fax. The Exchange proposes to delete the paragraph containing the second directive. As a result of the proposed change, the only notification directive in Section 311.01 would be the first one that requires companies to follow the timely disclosure and telephone alert procedures.

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it consistent with the requirements of the Act.<sup>11</sup> Specifically, the Commission believes it is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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 investors and the public interest.

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<sup>10</sup> The Exchange proposed several additional technical and non-substantive changes to Section 311.01. See Notice, supra note 3.

<sup>11</sup> 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

The proposed changes are intended to simplify and clarify the provisions of the Manual relating to the methods by which listed companies must notify the Exchange when certain events occur. By creating a uniform method of notification by web portal or email for the Sections that specifically refer to Section 204.00, identified in the chart above, the Exchange may reduce the likelihood that companies make a mistake when trying to notify the Exchange of important events. As explained by the Exchange, the Sections that will require notice by web portal or email pursuant to Section 204.00 all relate to matters where timely notification is critical to allow investors time to make arrangements to be holders of a security by a certain date for a distribution or shareholder meeting. In such cases, it makes sense to require listed companies to give notice to the Exchange using current, efficient electronic methods that more easily lend themselves to accurate recordkeeping than manual or written methods.<sup>13</sup> The Commission therefore believes that the proposed rule change is consistent with the Act, as more clear, easy to follow, and easily recorded notification methods should facilitate the transmission of information and promote transparency for the benefit of investors consistent with Section 6(b)(5) of the Act.<sup>14</sup>

Likewise, with respect to the remaining notification provisions in the Manual where timely notification is less critical, it is reasonable to allow companies more flexibility to determine what method of notification best suits a particular situation. The Commission notes

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<sup>13</sup> The Commission also notes that the Exchange provides for alternative methods of notification should electronic communications systems be unavailable. See supra note 7 and accompanying text.

<sup>14</sup> The Commission notes that the Exchange has committed in its rule text to displaying prominently on its website the specific electronic web-based communication system that listed companies must use to give notice in accordance with Section 204.00. Accordingly, the Commission believes that the proposed rule change should facilitate listed companies' means of providing notice of certain events while ensuring that all listed companies should be able to determine how they must comply with such notification requirements.



that, even in such cases, the Exchange is offering to allow companies to use the electronic web-based notification methods of 204.00 if they would like to use such methods.

The Commission also finds that the remaining clarifying, conforming, administrative, and technical changes are consistent with the Act. The changes to the Guide make it consistent with language used elsewhere in the Guide and Manual. For instance, the revision of the Item in the Guide dealing with press releases conforms the language used in that Guide entry with the corresponding language in Section 202.06(B). The same is true of the change to the Due Date description associated with Shareholders' Meeting / Notice of Record Date or Change of Record Date, which is meant to mirror language used in the Due Date description of the Guide entry associated with Dividend Notification. Because these changes conform the Guide's language to what is used elsewhere in the Manual, they promote consistency and transparency and reduce the potential for confusion. Similarly, in Section 311.01, the Exchange's deletion of a second, potentially conflicting method of notification of redemption actions should reduce listed companies' confusion as to how to comply with the provision, and ultimately, this should promote transparency and protect investors by ensuring better and more accurate notification. Lastly, the change to Section 402.01 that reduces the number of copies of proxy material that listed companies must provide to the Exchange lessens the administrative burden imposed on issuers without, as the Exchange represents, threatening the Exchange's review of such material for the benefit and protection of investors.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rules change (SR-NYSE-2012-54) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(83).