

By the Commission.

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 90001/September 25, 2020/SR-  
NYSE-2019-67]

### Securities Exchange Act of 1934; Order Granting Petition for Review, Scheduling Filing of Statements, and Denying New York Stock Exchange LLC's Motion To Lift the Stay; In the Matter of the New York Stock Exchange LLC Regarding an Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To Modify Chapter One of the Listed Company Manual To Modify the Provisions Relating to Direct Listings

This matter comes before the Securities and Exchange Commission ("Commission") on petition to review the approval, pursuant to delegated authority, of the New York Stock Exchange LLC ("NYSE") proposed rule change to amend Chapter One of the Listed Company Manual to modify the provisions relating to direct listings.<sup>1</sup>

On December 20, 2019, the Commission issued a notice of filing of the proposed rule change, as modified by Amendment No. 1, filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>2</sup> and Rule 19b-4<sup>3</sup> thereunder.<sup>4</sup> On February 13, 2020, a longer time period was designated within which to act on the proposed rule change.<sup>5</sup> On March 26, 2020, proceedings were instituted under Section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On June 22, 2020, NYSE filed Amendment No. 2 to the proposed rule change, replacing the proposed rule change, as modified by Amendment No.

1, in its entirety. On June 24, 2020, the Commission issued a notice of filing of Amendment No. 2 to the proposed rule change.<sup>8</sup> On June 24, 2020, a longer time period was designated for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.<sup>9</sup> On August 26, 2020, after consideration of the record for the proposed rule change, the Division of Trading and Markets ("Division"), pursuant to delegated authority,<sup>10</sup> approved the proposed rule change, as modified by Amendment No. 2 ("Approval Order").<sup>11</sup>

On August 31, 2020, pursuant to Commission Rule of Practice 430,<sup>12</sup> the Council of Institutional Investors ("CII") filed with the Commission a notice of intention for review of the Approval Order. Pursuant to Commission Rule of Practice 431(e), the Approval Order was stayed by the CII filing with the Commission the notice of intention to petition for review.<sup>13</sup> On September 4, 2020, NYSE filed a motion for the Commission to lift the automatic stay of the Approval Order and a brief in support of its motion to lift the stay. On September 8, 2020, CII filed a brief in opposition to NYSE's motion to lift the automatic stay. On September 8, 2020, pursuant to Commission Rule of Practice 430,<sup>14</sup> the CII filed a petition for review of the Approval Order. On September 11, 2020, NYSE filed a reply brief in support of its motion to lift the stay.

Pursuant to Rule 431 of the Rules of Practice,<sup>15</sup> the petition for review of the Approval Order of CII is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Approval Order on or before October 16, 2020.

Finally, the Commission finds that it is inappropriate to lift the automatic stay during the pendency of the Commission's review.<sup>16</sup> CII argues that the proposed rule change makes changes to the initial public offering ("IPO") market that are "so significant

that the Commission should maintain the stay" while it considers "the adequacy of investor protections" and other policy issues under the proposed rule change. We do not believe that NYSE has identified a compelling reason that lifting the automatic stay furthers the public interest, particularly in light of the policy considerations CII has identified. We do not believe it to be in the public interest to alter the status quo while the Commission considers the issues raised by the proposed rule change before it becomes effective. We accordingly deny NYSE's motion to lift the stay.

For the reasons stated above, it is hereby:

ORDERED that the petition of CII for review of the Division's action to approve the proposed rule change by delegated authority be GRANTED; and

It is further ORDERED that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before October 16, 2020.

It is further ORDERED that NYSE's Motion to Lift the Automatic Stay is hereby denied; and

It is further ORDERED that the August 26, 2020, order approving the proposed rule change, as modified by Amendment No. 2 (File No. SR-NYSE-2019-67), shall remain stayed.

By the Commission.

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0214, SEC File No.  
270-238]

### Proposed Collection; Comment Request

*Extension:*

Rule 17a-7

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a-7 (17 CFR 270.17a-7) (the "rule") under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Act") is entitled "Exemption of certain purchase or sale transactions

<sup>1</sup> The proposed rule change relates to direct listings that also involve a primary capital raising. This matter does not affect NYSE's current rules related to direct listings that do not involve a primary capital raising.

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Exchange Act Release No. 87821, 84 FR 72065 (Dec. 30, 2019). NYSE filed the proposed rule change on December 11, 2019. On December 13, 2019, NYSE filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.

<sup>5</sup> See Exchange Act Release No. 88190, 85 FR 8981 (Feb. 20, 2020).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Exchange Act Release No. 88485, 85 FR 18292 (Apr. 1, 2020).

<sup>8</sup> See Exchange Act Release No. 89148, 85 FR 39246 (June 30, 2020).

<sup>9</sup> See Exchange Act Release No. 89147, 85 FR 39226 (June 30, 2020).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> See Exchange Act Release No. 89684, 85 FR 54454 (Sept. 1, 2020).

<sup>12</sup> 17 CFR 201.430.

<sup>13</sup> 17 CFR 201.431(e).

<sup>14</sup> 17 CFR 201.430.

<sup>15</sup> 17 CFR 201.431.

<sup>16</sup> See Exchange Act Release No. 60988 (Nov. 12, 2009) (refusing to lift automatic stay because the petitioner "raised important policy issues that warrant Commission consideration prior to allowing" rule change to go into effect).

between an investment company and certain affiliated persons thereof.” It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies (“funds”), that are affiliated persons (“first-tier affiliates”) or affiliated persons of affiliated persons (“second-tier affiliates”), or between a fund and a first- or second-tier affiliate other than another fund, when the affiliation arises solely because of a common investment adviser, director, or officer. Rule 17a–7 requires funds to keep various records in connection with purchase or sale transactions effected in reliance on the rule. The rule requires the fund’s board of directors to establish procedures reasonably designed to ensure that the rule’s conditions have been satisfied. The board is also required to determine, at least on a quarterly basis, that all affiliated transactions effected during the preceding quarter in reliance on the rule were made in compliance with these established procedures. If a fund enters into a purchase or sale transaction with an affiliated person, the rule requires the fund to compile and maintain written records of the transaction.<sup>1</sup> The Commission’s examination staff uses these records to evaluate for compliance with the rule.

While most funds do not commonly engage in transactions covered by rule 17a–7, the Commission staff estimates that nearly all funds have adopted procedures for complying with the rule.<sup>2</sup> Of the approximately 2,915 currently active funds, the staff estimates that virtually all have already adopted procedures for compliance with rule 17a–7. This is a one-time burden, and the staff therefore does not estimate an ongoing burden related to the policies and procedures requirement of the rule for funds.<sup>3</sup> The staff estimates that there are approximately 90 new funds that register each year, and that each of these funds adopts the relevant policies and procedures. The staff estimates that it takes approximately 4 hours to develop and adopt these

<sup>1</sup> The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors’ determination that the transaction was in compliance with the procedures was made.

<sup>2</sup> Unless stated otherwise, these estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives.

<sup>3</sup> Based on our reviews and conversations with fund representatives, we understand that funds rarely, if ever, need to make changes to these policies and procedures once adopted, and therefore we do not estimate a paperwork burden for such updates.

policies and procedures. Therefore, the total annual burden related to developing and adopting these policies and procedures would be approximately 360 hours.<sup>4</sup>

Of the 2,915 existing funds, the staff assumes that approximately 25%, (or 729) enter into transactions affected by rule 17a–7 each year (either by the fund directly or through one of the fund’s series), and that the same percentage (25%, or 23 funds) of the estimated 90 funds that newly register each year will also enter into these transactions, for a total of 752<sup>5</sup> companies that are affected by the recordkeeping requirements of rule 17a–7. These funds must keep records of each of these transactions, and the board of directors must quarterly determine that all relevant transactions were made in compliance with the company’s policies and procedures. The rule generally imposes a minimal burden of collecting and storing records already generated for other purposes.<sup>6</sup> The staff estimates that the burden related to making these records and for the board to review all transactions would be 3 hours annually for each respondent, (2 hours spent by compliance attorneys and 1 hour spent by the board of directors)<sup>7</sup> or 2,256 total hours each year.<sup>8</sup>

Based on these estimates, the staff estimates the combined total annual burden hours associated with rule 17a–7 is 2,616 hours.<sup>9</sup> The staff also estimates that there are approximately 752 respondents and 6,016 total responses.<sup>10</sup>

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not

<sup>4</sup> This estimate is based on the following calculations: (4 hours × 90 new funds = 360 hours).

<sup>5</sup> This estimate is based on the following calculation: (729 + 23 = 752).

<sup>6</sup> Commission staff believes that rule 17a–7 does not impose any costs associated with record preservation in addition to the costs that funds already incur to comply with the record preservation requirements of rule 31a–2 under the Act. Rule 31a–2 requires companies to preserve certain records for specified periods of time.

<sup>7</sup> The staff estimates that funds that rely on rule 17a–7 annually enter into an average of 8 rule 17a–7 transactions each year. The staff estimates that the compliance attorneys of the companies spend approximately 15 minutes per transaction on this recordkeeping, and the board of directors spends a total of 1 hour annually in determining that all transactions made that year were done in compliance with the company’s policies and procedures.

<sup>8</sup> This estimate is based on the following calculation: (3 hours × 752 companies = 2,256 hours).

<sup>9</sup> This estimate is based on the following calculation: (360 hours + 2,256 hours = 2,616 total hours).

<sup>10</sup> This estimate is based on the following calculations: 752 funds that engage in rule 17a–7 transactions × 8 transactions per year = 6,016.

derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 17a–7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission’s estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 24, 2020.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting; Cancellation**

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 85 FR 60845, September 28, 2020.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Wednesday, September 30, 2020 at 10:00 a.m.

**CHANGES IN THE MEETING:** The Open Meeting scheduled for Wednesday, September 30, 2020 at 10:00 a.m., has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.