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–EMERALD–2021–11 and should be submitted on or before April 29, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07194 Filed 4–7–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91471; File No. SR–NYSE–2020–85]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the NYSE Listed Company Manual To Revise the Shareholder Approval Requirements in Sections 312.03 and 312.04 and the Requirements for Related Party Transactions in Section 314.00

April 2, 2021.

On December 16, 2020, 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 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE Listed Company Manual (''Manual'') to revise the shareholder approval requirements in Sections 312.03 and 312.04 and the requirements for related party transactions in Section 314.00. The Commission published notice of the proposed rule change in the **Federal Register** on January 4, 2021.[3] On February 12, 2021, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comment letters on the proposal. On March 30, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing notice of the filing of Amendment No. 1 to solicit comment from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Description of the Proposal, as Modified by Amendment No. 1

The Exchange is proposing to amend its shareholder approval rules for issuances of securities to certain related parties, as set forth in Section 312.03(b) of the Manual. Section 312.03(b) of the Manual currently requires shareholder approval prior to certain issuances of common stock, or securities convertible into or exercisable for common stock, to: (1) A director, officer, or substantial security holder[7] of the company (each a ''related party'' for purposes of current Section 312.03(b)); (2) a subsidiary, affiliate, or other closely related person of a related party; or (3) any company or entity in which a related party has a substantial direct or indirect interest. Such shareholder approval is subject to an exemption for early stage companies set forth in Section 312.03(b) of the Manual.

Under Section 312.03(b) of the Manual, prior shareholder approval is currently required if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance. A limited exception to these shareholder approval requirements permits cash sales relating to no more than five percent of the number of shares of common stock or voting power outstanding that meet a minimum price test set forth in the rule (''Minimum Price'')[8] if the related party in the transaction has related party status solely because it is a substantial security holder of the company.

The Exchange is proposing several changes to Section 312.03(b) of the Manual. The Exchange states that these changes would bring its shareholder approval requirements into closer alignment with those of Nasdaq and NYSE American.[9] First, the Exchange proposes to modify the class of persons with respect to which an issuance of common stock would require a listed

[56] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90803 (December 28, 2020), 86 FR 0148.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 91126, 86 FR 10362 (February 19, 2021).

[6] In Amendment No. 1, the Exchange: (1) Revised the proposed rule text in Section 312.03(b)(3) of the Manual to state that shareholder approval would be required for issuances of stock to Related Parties that exceed one percent of the common stock or the voting power outstanding before the issuance, other than cash sales for a price that is at least the Minimum Price (defined herein); (2) revised the proposed rule text in Section 312.03(c)(2) of the Manual to state that shareholder approval is required for securities issued in connection with an acquisition of the stock or assets of another company if the issuance of securities, when alone or combined with any other present or potential issuance of common stock or securities convertible into common stock in connection with such acquisition, is equal to or exceeds either 20 percent of the number of shares of common stock or 20 percent of the voting power before the issuance; (3) revised the proposed rule text in Section 314.00 of the Manual to state that a company's audit committee or another independent body of the board of directors shall conduct a reasonable prior review of related party transactions, and will prohibit a transaction if it determines it to be inconsistent with the interests of the company and its shareholders; (4) revised the proposed rule text in Section 314.00 of the Manual to state that, for the purposes of Section 314.00, the term ''related party transactions'' will not apply the transaction value threshold under Item 404 of Regulation S–K or the materiality threshold under Form 20–F, Item 7.B, as applicable; (5) clarified the discussion regarding the applicability of Section 312.03(b); (6) clarified that, under Nasdaq and NYSE American rules, stock sales may be subject to shareholder approval under equity compensation rules; (7) deleted a description of certain requirements of Section 312.03(b) that the Exchange has proposed to delete because they relate to the early stage company exemption that would no longer be applicable; (8) clarified that the Exchange believes that Section 312.03(c) would cause any significantly economically dilutive transaction to be subject to shareholder approval; (9) clarified that the amendments to Section 312.03(c) would remove a limitation that participation in a financing under the exception is available only to multiple purchasers; and (10) made other clarifying, conforming, and technical changes. Amendment No. 1 is available at *https://www.sec.gov/rules/sro/nyse/nysearchive/nysearchive2020.htm.*

[7] For purposes of Section 312.03, Section 312.04(e) provides that: ''[a]n interest consisting of less than either five percent of the number of shares of common stock or five percent 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] Section 312.04(i) defines the ''Minimum Price'' as follows: ''Minimum Price'' means a price that is the lower of: (i) The Official Closing Price immediately preceding the signing of the binding agreement; or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement. As proposed, Section 312.04(j) defines ''Official Closing Price'' as follows: ''Official Closing Price'' of the issuer's common stock means the official closing price on the Exchange as reported to the Consolidated Tape immediately preceding the signing of a binding agreement to issue the securities. For example, if the transaction is signed after the close of the regular session at 4:00 p.m. Eastern Standard Time on a Tuesday, then Tuesday's official closing price is used. If the transaction is signed at any time between the close of the regular session on Monday and the close of the regular session on Tuesday, then Monday's official closing price is used. The Exchange is proposing to correct a typographical error in the definition of ''Official Closing Price.''

[9] *See* Amendment No. 1, *supra* note 6, at 4.

company to seek shareholder approval. Specifically, Section 312.03(b) as amended would require prior shareholder approval for certain issuances of common stock to directors, officers, and substantial security holders of the company (each a ''Related Party'') and would no longer require such approval for issuances to such Related Parties' subsidiaries, affiliates or other closely related persons or to any companies or entities in which a Related Party has a substantial interest (except where a Related Party has a five percent or greater interest in the counterparty, as described below).

In addition, the Exchange has proposed to amend Section 312.03(b) to require shareholder approval of cash sales to Related Parties only if the price is less than the Minimum Price. Issuances to Related Parties in non-cash transactions relating to more than one percent of the issuer's common stock or voting power outstanding before the issuance would continue to be subject to shareholder approval.[10] Cash sales to a Related Party relating to more than one percent of the issuer's common stock or voting power prior to the issuance for prices below the Minimum Price would continue to be subject to shareholder approval under Section 312.03(b). Cash sales to Related Parties that meet the Minimum Price requirement would be subject to the same limitations as cash sales to all other investors under the proposed amended Section 312.03(c), as described below. In addition, certain issuances to a Related Party that meet the Minimum Price could also be subject to shareholder approval under proposed Section 312.03(b)(ii). The Exchange proposes Section 312.03(b)(ii) to require shareholder approval of any transaction or series of related transactions in which any Related Party has a five percent or greater interest (or such persons collectively have a 10 percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction and the present or potential issuance of common stock, or securities convertible into common stock, could result in an increase in either the number of shares of common stock or voting power outstanding of five percent or more before the issuance.

Finally, the Exchange proposes to delete from Section 312.03(b) two provisions that it states will no longer be relevant as they relate to transactions that benefit from exemptions from shareholder approval under current Section 312.03(b), but would be exempt from shareholder approval under the general application of Section 312.03(b) as proposed to be amended. These provisions relate to: (1) Cash sales meeting the Minimum Price test and relating to no more than five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance to a Related Party where the Related Party involved in the transaction is classified as such solely because such person is a substantial security holder; and (2) the early stage company exemption, to which the Exchange proposes to remove the reference from Section 312.04. The Exchange states that, for the same reason, the Exchange proposes to delete from Section 312.03(b) a sentence that provides that the early stage company exemption is not applicable to a sale of securities by the listed company to any person subject to the provisions of Section 312.03(b) in a transaction, or series of transactions, whose proceeds will be used to fund an acquisition of stock or assets of another company where such person has a direct or indirect interest in the company or assets to be acquired or in the consideration to be paid for such acquisition.

The Exchange states that Section 312.03(b) would continue to require that any sale of stock to an employee, director, or service provider is also subject to the equity compensation rules in Section 303A.08 of the Manual and that shareholder approval would be required if any of the subparagraphs of Section 312.03 require such approval, notwithstanding that the transaction does not require approval under Section 312.03(b) or one or more of the other subparagraphs.

In addition, the Exchange is proposing changes to Section 312.03(c) of the Manual, which currently requires shareholder approval of any transaction relating to 20 percent or more of the company's outstanding common stock or 20 percent of the voting power outstanding before such issuance, but provides the following exceptions: (1) Any public offering for cash; and (2) any bona fide private financing involving a cash sale of the company's securities that comply with the Minimum Price requirement. As set forth in Section 312.04(g), a ''bona fide private financing'' refers to a sale in which either: (1) A registered broker-dealer purchases the securities from the issuer with a view to the private sale of such securities to one or more purchasers; or (2) the issuer sells the securities to multiple purchasers, and no one such purchaser, or group of related purchasers, acquires, or has the right to acquire upon exercise or conversion of the securities, more than five percent of the shares of the issuer's common stock or more than five percent of the issuer's voting power before the sale.

The Exchange proposes to replace the reference to ''bona fide private financing'' in Section 312.03(c) with ''other financing (that is not a public offering for cash) in which the company is selling securities for cash.'' [11] This change would eliminate the requirement that, for the exception, the issuer sell the securities to multiple purchasers, and that no one such purchaser, or group of related purchasers, acquires more than five percent of the issuer's common stock or voting power.[12] In addition, the Exchange states that, because any sale to a broker-dealer under the current bona fide private financing exception would also qualify for an exception to shareholder approval under the proposed amended exception, there is no need to retain a separate provision for sales made to broker-dealers.[13] The Exchange also proposes to amend Section 312.03(c) to provide that, if the securities in a financing (that is not a public offering for cash) in which the company is selling securities for cash are issued in connection with an acquisition of the stock or assets of another company, shareholder approval will be required if the issuance of the securities alone or when combined with any other present or potential issuance of common stock in connection with such acquisition, is equal to or exceeds either 20 percent of the number of shares of common stock or 20 percent of the voting power outstanding before the issuance. Additionally, as the ''bona fide private financing'' term will no longer be used in Section 312.03(c), the Exchange proposes to delete the definition of that term in Section 312.04(g). The Exchange states that these changes would bring its shareholder requirements into closer alignment with those of Nasdaq and NYSE American.[14]

The Exchange is also proposing to delete Section 312.03T, which was adopted to provide temporary relief from certain of the requirements of Section 312.03 during the COVID–19 pandemic, and which was applicable by

[10] *See id.* at 4.

[11] As described above, Section 312.03(c) of the Manual also provides an exception from the shareholder approval requirements of Section 312.03(c) for any public offering for cash.

[12] NYSE stated in its proposal that while the proposed amended exemption would not limit the size of any transaction that meets the Minimum Price test, any such transaction giving rise to a change of control will be subject to shareholder approval under Section 312.03(d). *See* Amendment No. 1, *supra* note 6, at n. 9.

[13] *See id.* at 9.

[14] *See* Amendment No. 1, *supra* note 6, at 4.

its terms through June 30, 2020. As that date has passed, the Exchange has proposed to delete Section 312.03T in its entirety, as it is no longer applicable.

Finally, the Exchange is proposing to amend Section 314.00 of the Manual, which currently provides that related party transactions normally include transactions between officers, directors, and principal shareholders and the company and that each related party transaction is to be reviewed and evaluated by an appropriate group within the listed company involved. The current rule further states that, while the Exchange does not specify who should review related party transactions, the Exchange believes that the audit committee or another comparable body might be considered as an appropriate forum for this task.

The Exchange proposes to amend the first paragraph of Section 314.00[15] by stating that, for purposes of Section 314.00, the term ''related party transaction'' refers to transactions required to be disclosed pursuant to Item 404 of Regulation S–K under the Exchange Act (but without applying the transaction value threshold under that provision), and, in the case of foreign private issuers, the term ''related party transaction'' refers to transactions required to be disclosed pursuant to Form 20–F, Item 7.B (but without regard to the materiality threshold of that provision).[16]

In addition, the Exchange proposes to amend Section 314 to state that the company's audit committee[17] or another independent body of the board of directors shall conduct a reasonable prior review and oversight of all related party transactions for potential conflicts of interest and will prohibit such a transaction if it determines it to be inconsistent with the interests of the company and its shareholders.[18]

[15] The second paragraph of Section 314.00 will be retained in its entirety. It reads as follows: ''The Exchange will continue to review proxy statements and other SEC filings disclosing related party transactions and where such situations continue year after year, the Exchange will remind the listed company of its obligation, on a continuing basis, to evaluate each related party transaction and determine whether or not it should be permitted to continue.''

[16] *See* Item 404 of Regulation S–K (Transactions with related persons, promoters and certain control persons) [17 CFR 229.404] and Item 7.B of Form 20–F (Related party transactions) [referenced in 17 CFR 249.220f].

[17] Section 303A.07 of the Manual requires that all members of an audit committee must satisfy independence requirements set out in Section 303A.02 of the Manual and, in the absence of an applicable exemption, Rule 10A–3(b)(1) of the Exchange Act.

[18] The Exchange proposes to delete from Section 314.00 a sentence that reads as follows: ''Following the review, the company should determine whether or not a particular relationship serves the best interests of the company and its shareholders and whether the relationship should be continued or eliminated.'' The Exchange states that this sentence is no longer necessary; the proposed amended rule requires the audit committee or other independent body of the board to prohibit any related party transaction it reviews if it determines it to be inconsistent with the interests of the company and its shareholders. *See* Amendment No. 1, *supra* note 6, at n. 11.

II. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 1, and finds that it is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change, as modified by Amendment No 1, is consistent with Section 6(b)(5) of the Exchange Act,[20] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful corporate governance listing standards for a national securities exchange is of substantial importance to financial markets and the investing public, especially given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in assuring that exchange-listed companies observe good governance practices including safeguarding the interests of shareholders with respect to certain potentially dilutive transactions.[21]

As discussed above, the Exchange has proposed to limit the shareholder approval requirements of Section 312.03(b) to a Related Party that is a director, officer, or substantial security holder,[22] and no longer require shareholder approval under this provision for issuances to subsidiaries, affiliates, or other closely-related persons of the Related Party or any company or entity in which a Related Party has a substantial interest except where the Related Party has a five percent or greater interest in the company or assets to be acquired or in the consideration to be paid and the issuance falls within the scope of proposed Section 312.03(b)(ii). Section 312.03(b) would also no longer require shareholder approval for cash sales to Related Parties at or above the Minimum Price.[23] Under proposed Section 312.03(b)(ii), shareholder approval would be required for an issuance of common stock or securities convertible into or exercisable for common stock where such securities are issued as consideration in a transaction or series of related transactions in which any Related Party has a five percent or greater interest (or such persons collectively have a 10 percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction and the present or potential issuance of common stock, or securities convertible into common stock, could result in an increase in outstanding common shares of five percent or more, or where otherwise required under the

[19] 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).

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] *See, e.g.,* Securities Exchange Act Release No. 84287 (September 26, 2018), 83 FR 49599 (October 2, 2018) (NASDAQ–2018–008) (approving a Nasdaq proposal to change to the definition of market value for purposes of the shareholder approval rule and eliminate the requirement for shareholder approval of issuances at less than book value but greater than market value); Securities Exchange Act Release No. 76814 (December 31, 2015), 81 FR 0820 (January 7, 2016) (NYSE–2015–02) (approving amendments to the Manual to exempt early stage companies from requirements to obtain shareholder approval in certain circumstances) (''2015 Approval Order''). *See also* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (approving equity compensation shareholder approval rules of both the NYSE and the National Association of Securities Dealers, Inc. n/k/a NASDAQ); and Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (approving registration of BATS Exchange, Inc. noting that qualitative listing requirements including shareholder approval rules are designed to ensure that companies trading on a national securities exchange will adequately protect the interest of public shareholders).

[22] *See supra* note 7 (defining ''substantial security holder'').

[23] Specifically, Section 312.03(b) would no longer require shareholder approval of cash sales at or above Minimum Price where the number of shares of common stock into which the securities may be convertible or exercisable, exceeds: (i) One percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance; or (ii) in the case of a cash sale to a Related Party that has that status solely because such person is a substantial security holder, five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance. The Exchange would continue to require shareholder approval for all non-cash sales to Related Parties that exceed one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.

Exchange's rules.[24] The Exchange states that it believes that current requirements in Section 312.03(b) can make it unnecessarily difficult for listed companies to raise necessary capital in private placement transactions that are in the interests of the company and its shareholders.[25]

The Exchange states that the proposed changes would bring its shareholder approval requirements into closer alignment with other exchanges, namely Nasdaq and NYSE American.[26] The Exchange notes that Nasdaq and NYSE American rules contain substantively identical requirements to those the Exchange is proposing for transactions in which a Related Party has an interest in the company or assets to be acquired or the consideration to be paid in the transaction.[27] The Exchange also states that, unlike NYSE, Nasdaq and NYSE American rules do not have a separate shareholder approval requirement for cash sales to a Related Party that do not meet the Minimum Price requirement and that relate to more than one percent of the issuer's common stock or voting power, although such sales may also be subject to shareholder approval requirements under the exchanges' equity compensation rules.[28] In addition, Nasdaq and NYSE American rules do not include shareholder approval requirements specifically for issuances to subsidiaries, affiliates, or closely related persons of Related Parties or to companies or entities in which a Related Party has a substantial interest unless the Related Party has a five percent or greater interest in the company or assets to be acquired or consideration to be paid in the transaction.[29] Accordingly, the Exchange states that it believes that its proposal to limit the Related Party requirements to directors, officers, and substantial security holders would harmonize its rules with Nasdaq and NYSE American requirements.[30]

The Commission believes that the proposed amendments to Section 312.03(b) to change the circumstances under which shareholder approval is required for issuances to Related Parties, and where shareholder approval is required for issuances based on certain relationships with a Related Party, are consistent with Section 6(b)(5) of the Exchange Act. Although the circumstances of when shareholder approval is required under Section 312.03(b) of the Manual will be modified by the proposal, there will continue to be other protections for shareholders. The Exchange's rules provide that, notwithstanding that the transaction does not require approval under Section 312.03(b), shareholder approval is required if any of the subparagraphs of Section 312.03 require such approval.[31] As described above, regardless of the Minimum Price, the Exchange is proposing to require shareholder approval of any transaction or series of related transactions in which any Related Party has a five percent or greater interest (or such persons collectively have a 10 percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction and the present or potential issuance of common stock, or securities convertible into common stock, could result in an increase in outstanding common shares of five percent or more.[32] This provision therefore would require shareholder approval under the conditions described above in circumstances where the transaction is priced at or above the Minimum Price as well as below the Minimum Price.[33] Section 312.03(c) would also continue to require shareholder approval for any non-cash issuances of 20 percent or more of the issuer's common stock or voting power and any financing (that is not a public offering for cash) involving cash sales relating to 20 percent or more of the issuer's common stock or voting power for less than the Minimum Price.[34] Under the proposal, Section 312.03(c) will also require shareholder approval of all cash sales in connection with an acquisition of the stock or assets of another company relating to 20 percent of the issuer's common stock or voting power even if the issuance meets the Minimum Price.[35] The Exchange also states that Section 312.03(c) applies to any transaction or series of related transactions, which provides shareholders with further protection by ensuring that a company cannot avoid the shareholder approval requirement by separating an overall transaction into smaller separate transactions that would not individually require shareholder approval. In addition, any sale that gives rise to a change of control will be subject to shareholder approval under Section 312.03(d), a sale of stock to an employee, director, or service provider would continue to be subject to the equity compensation shareholder approval rules in Section 303A.08 of the Manual, and shareholder approval will be required if a vote is required under any other applicable provision of the Exchange's rules. As to cash sales of more than one percent of common stock or voting power to directors, officers, and substantial security holders below Minimum Price, Section 312.03(b) will continue to require shareholder approval for such issuances to these Related Parties.[36] Section 312.03(b) will also continue to require shareholder approval for non-cash issuances of more than one percent of the number of shares of common stock or the voting power outstanding before the issuance to such Related Parties.[37]

Furthermore, Section 314.00 of the Manual, concerning review of related party transactions, as proposed to be

[24] The Exchange temporarily waived certain requirements under Section 312.03 to provide listed companies with greater flexibility to raise capital during the COVID–19 crisis from April 6, 2020 through March 31, 2021. Particularly, pursuant to the waiver, the Exchange allowed companies to sell their securities for cash to related parties and other persons subject to Section 312.03(b) under certain conditions without complying with the numerical limitations of that rule, as long as the sale in the cash transaction met the Minimum Price requirements, and other applicable requirements of the Exchange's rules. *See* Securities Exchange Act Release No. 88572 (April 6, 2020), 85 FR 20323 (April 10, 2020) (SR–NYSE–2020–30) (waiving certain requirements of Section 312.03 through June 30, 2020). *See also* Securities Exchange Act Release No. 89219 (July 2, 2020), 85 FR 41640 (July 10, 2020) (SR–NYSE–2020–58) (extending the waiver through September 30, 2020). *See also* Securities Exchange Act Release No. 90020 (September 28, 2020), 85 FR 62357 (October 2, 2020) (SR–NYSE–2020–79) (extending the waiver through December 31, 2020). *See also* Securities Exchange Act Release No. 2712 (January 7, 2021), 86 FR 2712 (January 13, 2021) (SR–NYSE–2020–108) (extending the waiver through March 31, 2021) (''Waiver''). The Exchange also temporarily waived certain requirements for meeting the bona fide financing exception under Section 312.03(c). *See infra* note 44.

[25] *See* Amendment No. 1, *supra* note 6, at 4.

[26] *See id. See also* Nasdaq Marketplace Rule 5635 and NYSE American Company Guide Sections 712 and 713.

[27] *See* Amendment No. 1, *supra* note 6, at 8. *See* proposed Section 312.03(b)(ii).

[28] *See* Amendment No. 1, *supra* note 6, at 6.

[29] *See* Nasdaq Marketplace Rule 5635 and NYSE American Company Guide Sections 712 and 713.

[30] *See* Amendment No. 1, *supra* note 6, at 6.

[31] *See* proposed Section 312.03(b)(iii). *See also* Section 312.04(a).

[32] *See* proposed Section 312.03(b)(ii). The Exchange notes that this limitation is substantively identical to a limitation placed specifically on issuances to related parties in the Nasdaq and NYSE American rules. *See* Amendment No. 1, *supra* note 6, at 7

[33] Although NYSE is deleting its specific requirement for shareholder approval issuances to a subsidiary, affiliate, or other closely-related person of a Related Party, and any company or entity in which a Related Party has a substantial direct or indirect interest, shareholder approval for issuances to such entities could still be required if they meet the requirements of this new provision.

[34] *See infra* note 36 and accompanying text (discussing when shareholder approval is required for cash sales to Related Parties for below Minimum Price).

[35] *See* proposed Section 312.03(c). In determining whether the issuance is equal to or exceeds 20 percent, the rule provides that the issuance is combined with any other present or potential issuance of common stock or securities convertible into common stock in connection with the acquisition.

[36] *See* Section 312.03(b)(i).

[37] *See supra* note 10 and accompanying text.

amended, states that a company's audit committee or another independent body of the board of directors shall conduct a reasonable prior review and oversight of all related party transactions required to be reviewed [38] for potential conflicts of interest and will prohibit a related party transaction if it determines it to be inconsistent with the interests of the company and its shareholders.[39] The Commission has long acknowledged the important role an independent board committee has in protecting shareholders from potential conflicts of interest.[40] The Commission believes that prior independent committee review and oversight of certain related party transactions for conflicts of interest, with the requirement to prohibit transactions that are determined to be inconsistent with the interests of the company and its shareholders, is an additional safeguard to protect shareholder interests. Additionally, the Exchange has proposed to expand the types of related parties whose transactions will be subject to review under Section 314.00 of the Manual, as discussed in more detail below. This should help to ensure that related party transactions that can present conflicts of interest are within the scope of the Exchange's rule and will be reviewed by the audit committee or another independent body of the board.[41]

The Commission believes that the continued requirements for shareholder approval described above, including, among others, the new provision in Section 312.02(b)(ii), and the changes to the review of related party transactions in Section 314.00 of the Manual including, among others, expanding the scope of related parties whose transactions are covered by the rule,[42] on balance, should help to ensure continued shareholder protections. The Commission also notes that the changes to Section 312.03(b) of the Manual described above are consistent with the rules of two other national securities exchanges, Nasdaq and NYSE American.[43]

The Commission believes that the proposed amendments to Section 312.03(c) are consistent with Section 6(b)(5) of the Exchange Act. The proposed amendments to Section 312.03(c) do not change the rule as it relates to shareholder approval for issuances of 20 percent or more of the number of shares of the voting power or common stock outstanding before the issuance in non-cash transactions or to cash transactions for a price below the Minimum Price. The amendments would remove the requirements, under the bona fide private placement exception to Section 312.03(c), that cash sales at a price at least as great as Minimum Price must be to multiple purchasers and that a single purchaser may not acquire, or have the right to acquire more than five percent of the shares of the issuer's common stock or voting power.[44] The Exchange states that it believes that current Section 312.03(c) of the Manual can make it unnecessarily difficult for listed companies to raise necessary capital in private placement transactions that are in the interests of the company and its shareholders,[45] and that the proposed requirements would allow companies additional flexibility. The Exchange states that it believes that this change is consistent with the protection of investors because the Minimum Price requirement provides protection against economic dilution, while the separately applicable requirements of Section 312.03(d) provide that shareholders will have a vote on any transaction that would result in a change of control. The proposal also adds a new condition to the financing exception to the shareholder vote requirements under Section 312.03(c) by requiring shareholder approval if the securities being issued are in connection with an acquisition of the stock or assets of another company and the issuance either alone or in combination with any other present or potential issuance of common stock or securities convertible into common stock is equal to or exceeds 20 percent of the common stock or voting power outstanding before the issuance. Under the current bona fide private financing exception under the Exchange's existing rules, there was no such requirement. The new requirement will ensure that if a financing, other than a public offering for cash, involving a 20 percent issuance is for an acquisition, even if at the Minimum Price, there will be a shareholder vote on the matter. This new requirement can help to ensure that shareholders will get to vote on potentially dilutive transactions, whether voting dilution or otherwise, that may occur due to the acquisition.

The Exchange further states that the proposed amendments would make the Exchange's rules for cash sales of securities that meet the Minimum Price test substantively identical to those of Nasdaq and NYSE American.[46] The Commission is cognizant of the fact that the exchanges operate in a highly competitive environment, including with respect to the listing of issuers. In addition, shareholder approval will still be required if any issuance under the new financing provision results in a change of control or if a vote is required under any other applicable provisions, such as the equity compensation rules or the new Related Party provisions of Section 312.03(b)(ii).[47] The proposal will allow listed companies more flexibility to raise capital at market related prices without shareholder approval under Section 312.03(c) while still preserving protections for shareholders through the other shareholder approval requirements as well as promoting fair competition among exchanges given that NASDAQ and NYSE American have substantially identical provisions.

Additionally, the proposed amendments to Section 314.00 are consistent with investor protection pursuant to Section 6(b)(5) of the Exchange Act. By defining the term ''related party transaction'' by reference to the Commission's disclosure rules, as discussed below, the amendment would provide greater clarity and transparency to when the review of a related party transaction would be required. The related party transactions required to be reviewed also would be expanded when compared to the current rule requirement which states ''related party transactions normally include transactions between officers, directors and principal shareholders and the

[38] *See infra* note 49 and accompanying text (describing proposed revisions to the related party transactions that must be reviewed under Section 314.00).

[39] *See supra* note 16.

[40] *See* 2015 Approval Order, *supra* note 21, 81 FR at n. 88.

[41] As discussed above, under Section 314.00 of the Manual, issuers have an obligation on a continuing basis to evaluate each related party transaction and determine whether or not it should be permitted to continue. *See supra* note 15.

[42] *See supra* notes 15–18 and accompanying text. *See also infra* note 49 and accompanying text.

[43] *See* Nasdaq Marketplace Rule 5635 and NYSE American Company Guide Sections 712 and 713.

[44] The Exchange had temporarily waived these requirements of Section 312.03(c) due to the COVID–19 crisis under certain conditions. *See* Waiver, *supra* note 24 (providing that a listed company would be exempt from the shareholder approval requirement of Section 312.03(c) in relation to a private placement transaction regardless of its size or the number of participating investors or the amount of securities purchased by any single investor, provided that the transaction is a sale of the company's securities for cash at a price that meets the Minimum Price requirement). The waiver did not apply to any sales of a listed company's securities where the use of the proceeds was to fund an acquisition. *See id.*

[45] *See* Amendment No. 1, *supra* note 6 at 4.

[46] *See* Amendment No. 1, *supra* note 6, at 9.

[47] *See* Section 312.04(a) (providing that. for the purpose of Section 312.03, shareholder approval is required if any of the subparagraphs of Section 312.03 require such approval, notwithstanding the fact that the transaction does not require approval under one or more of the other subparagraphs).

company.'' [48] Under the revised provisions, related party transactions refer to transactions required to be disclosed pursuant to Item 404 of Regulation S–K (but without applying the transaction value threshold of that provision) or for a foreign private issuer transactions required to be disclosed pursuant to Form 20–F, Item 7.B (but without regard to the materiality threshold of that provision) and these provisions include a broader group of persons than that listed in the current Exchange rule.[49] By proposing to require that transactions under the rule must be subject to prior review by either the audit committee or another body of independent directors, and that such body shall prohibit such a transaction if it determines it to be inconsistent with the interests of the company and its shareholders, the Exchange is adding more clarity to the rule's requirements. By removing the ambiguous language in the current rule that allowed a listed company flexibility in the kind of committee that it could choose to review related party transactions, as the Exchange stated in its proposal, this change will prevent a listed issuer from giving the role of reviewing transactions to any group that is not entirely made up of independent directors.[50]

Finally, it is consistent with the Exchange Act for the Exchange to remove Rule 312.03T, which is now obsolete, from the Exchange's rule text in order to provide greater transparency to the Exchange's rules and to avoid confusion.

III. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to the proposed rule change is consistent with the Exchange 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–NYSE–2020–85 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–2020–85. 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 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–2020–85, and should be submitted on or before April 29, 2021.

IV. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. The Commission notes that Amendment No. 1 clarifies the proposed rule change. Among other things, Amendment No. 1 amends the proposal to state or to clarify in the rule text: (1) That shareholder approval would be required for issuances of stock to Related Parties that exceed one percent of the common stock or the voting power outstanding before the issuance, except that shareholder approval will not be required if such transaction is a cash sale for a price that is at least the Minimum Price; (2) that shareholder approval is required for securities issued in connection with an acquisition of the stock or assets of another company if the issuance of securities, alone or when combined with any other present or potential issuance of common stock or securities convertible into common stock in connection with such acquisition, is equal to or exceeds either 20 percent of the number of shares of common stock or 20 percent of the voting power before the issuance; (3) that a company's audit committee or another independent body of the board of directors shall conduct a reasonable prior review of related party transactions, and will prohibit a transaction if it determines it to be inconsistent with the interests of the company and its shareholders; and (4) that, for the purposes of Section 314.00, the term ''related party transactions'' will not apply the transaction value threshold under Item 404 of Regulation S–K or the materiality threshold under Form 20–F, Item 7.B, as applicable.[51] The Exchange also made clarifying, conforming, and technical changes in the filing of the proposed rule change.[52] The Commission believes that the changes in Amendment No. 1 provide greater clarity to the proposal and should help to avoid any confusion as to the scope or application of the rule changes being adopted herein. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[53] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[54] that the proposed rule change (SR–NYSE–2020–85), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

[48] *See* current Section 314.00 of the Manual.

[49] Among other disclosures, Item 404 of Regulation S–K generally requires a description of any transaction in which the issuer was or is to be a participant that meets certain transaction value thresholds and in which any related party (including, for example, directors, executive officers, beneficial owners of more than five percent of any class of the issuer's voting securities, and their immediate family members) had or will have a direct or indirect material interest. Item 7.B of Form 20–F generally requires disclosure of transactions and loans between a foreign private issuer and certain categories of related parties (including, for example, directors, senior management, individuals with significant voting influence over the issuer, close family members of those categories of persons, and enterprises under common control). Required disclosure under Item 7.B includes the nature and extent of any transactions that are material to the company or the related party or that are unusual in their nature or conditions.

[50] *See* Amendment No. 1, *supra* note 6, at 12.

[51] *See supra* note 6.

[52] *See id.*

[53] 15 U.S.C. 78s(b)(2).

[54] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07198 Filed 4–7–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91466; File No. SR–NYSEAMER–2021–16]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 985NY

April 2, 2021.

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 March 29, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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 proposes to amend Rule 985NY (Qualified Contingent Cross Trade) to clarify the permissible trading differentials for such orders. 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 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

The purpose of this rule change is to amend Rule 985NY(Qualified Contingent Cross Trade) to clarify the permissible trading differentials for such orders.

Rule 900.3NY(y) provides that a Qualified Contingent Cross or QCC Order must be comprised of an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order or orders to buy or sell an equal number of contracts.[4] As Qualified Contingent Crosses, QCC Orders are automatically executed upon entry provided that the execution (i) is not at the same price as a Customer Order in the Consolidated Book and (ii) is at or between the NBBO.[5] In addition, QCC Orders may only be entered in the regular trading increments applicable to the options class under Rule 960NY (Trading Differentials).[6] Rule 960NY subsection (a) sets forth the minimum quoting increments for all options traded on the Exchange and subsection (b) sets forth the minimum trading increments of one cent ($0.01) for all series of option contracts traded on the Exchange.[7]

The Exchange proposes to modify Rule 985NY(2) to add reference to paragraph (b) of Rule 960NY in the text of the rule, which would make clear that QCCs may be entered in minimum trading increments of one cent ($0.01).[8] The Exchange believes this proposed change, which aligns with current functionality, would add clarity, transparency and internal consistency to Exchange rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed 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.

The Exchange believes that the proposed modification—to make clear that QCC Orders may be entered and traded in minimum trading increments of a penny would promote just and equitable principles of trade, as well as serve to remove impediments to and perfect the mechanism of a free and open market because the proposed change clarifies existing functionality. In addition, the Exchange believes that the proposed rule change is consistent with other options order types and functionalities that are not displayed in OPRA's quote feed. For example, electronic paired auctions, which are not displayed in OPRA's quote feed before they are executed, provide for penny trading increments, regardless of the quoting increment of the options class.[11] As a result, the proposed change would not impact the protection of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, as discussed above, the Exchange believes that the proposed change would align the rule text with current functionality. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

[55] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (i) At least one component must be an NMS Stock; (ii) all the components must be effected with a product price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component must be contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) must be determined by the time the contingent order is placed; (v) the component orders must bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (vi) the transaction must be fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. *See* Commentary .01 to Rule 900.3NY.

[5] *See* Rule 985NY. QCC Orders that cannot be executed when entered will automatically cancel. *See* Rule 985NY(1).

[6] *See* Rule 985NY(2).

[7] *See* Rule 960NY(a) and (b), respectively. Paragraph (2) to Rule 985NY provides that QCCs ''may only be entered in the regular trading increments applicable to the options class under Rule 960NY.''

[8] *See* proposed Rule 985NY(2) (''Qualified Contingent Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 960NY(b)'').

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See, e.g.,* Rule 971.1NY(b)(7) (regarding the Customer Best Execution—or CUBE—auction and providing that ''CUBE Orders may be entered in $.01 increments regardless of the MPV of the series involved'').