

the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise from the inclusion of obsolete services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹²

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

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:

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-27 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-2024-27. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-27 and should be submitted on or before October 31, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-23416 Filed 10-9-24; 8:45 am]

BILLING CODE 8011-01-P

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101257; File No. SR-NYSE-2024-35]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Section 302.00 of the NYSE Listed Company Manual To Exempt Closed-End Funds Registered Under the Investment Company Act of 1940 From the Requirement To Hold Annual Shareholder Meetings

October 4, 2024.

I. Introduction

On June 21, 2024, 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 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 302.00 of the NYSE Listed Company Manual ("Manual") to exempt closed-end funds registered under the Investment Company Act of 1940 ("1940 Act")³ from the requirement to hold annual shareholder meetings. The proposed rule change was published for comment in the **Federal Register** on July 9, 2024.⁴ On August 21, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁵ 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.⁶ The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁷ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

Section 102.04 of the Manual sets forth listing requirements for closed-end

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 80a-1 *et seq.*

⁴ See Securities Exchange Act Release No. 100460 (July 3, 2024), 89 FR 56447 ("Notice"). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nyse-2024-35/srnyse202435.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 100790, 89 FR 68676 (Aug. 27, 2024). The Commission designated October 7, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

management investment companies registered under the 1940 Act (“CEFs”). Section 302.00 of the Manual (“Section 302.00”) provides that companies listing common stock or voting preferred stock and their equivalents are required to hold an annual shareholders’ meeting for the holders of such securities during each fiscal year. Section 302.00 also sets forth certain exemptions from this annual shareholder meeting requirement.⁸ CEFs listed on the Exchange are currently required to comply with the Section 302.00 annual shareholder meeting requirement and are not subject to an exemption. The Exchange proposes to amend Section 302.00 to exempt CEFs listed under Section 102.04A of the Manual from the requirement to hold an annual shareholder meeting.⁹

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2024–35 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹⁰ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

⁸ Specifically, Section 302.00 exempts from this requirement companies whose only securities listed on the Exchange are non-voting preferred and debt securities, passive business organizations (such as royalty trusts), or securities listed pursuant to NYSE Rule 5.2(j)(2) (Equity Linked Notes), Rule 5.2(j)(3) (Investment Company Units), Rule 5.2(j)(4) (Index-Linked Exchangeable Notes), Rule 5.2(j)(5) (Equity Gold Shares), Rule 5.2(j)(6) (Equity-Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), Rule 5.2(j)(8) (Exchange-Traded Fund Shares), Rule 8.100 (Portfolio Depository Receipts), Rule 8.200 (Trust Issued Receipts), Rule 8.201 (Commodity-Based Trust Shares), Rule 8.202 (Currency Trust Shares), Rule 8.203 (Commodity Index Trust Shares), Rule 8.204 (Commodity Futures Trust Shares), Rule 8.300 (Partnership Units), Rule 8.400 (Paired Trust Shares), Rule 8.600 (Managed Fund Shares), Rule 8.601 (Active Proxy Portfolio Shares), Rule 8.700 (Managed Trust Securities), and Rule 8.900 (Managed Portfolio Shares).

⁹ The Exchange lists closed-end management investment companies that have filed an election to be treated as a business development company under the 1940 Act (“BDCs”) under Section 102.04B of the Manual. The Exchange is not proposing to exempt BDCs listed under Section 102.04B of the Manual from the annual shareholder meeting requirement set forth in Section 302.00.

¹⁰ 15 U.S.C. 78s(b)(2)(B).

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with the Exchange Act and, in particular, with Section 6(b)(5) of the Exchange Act, 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 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹²

The development and enforcement of meaningful corporate governance exchange listing standards 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 and the role of an exchange in overseeing its market and ensuring compliance with its listing standards.¹³ The corporate governance standards embodied in exchange listing standards play an important role in assuring that listed companies observe good governance practices.¹⁴

In particular, the Commission has consistently recognized the importance of the annual shareholder meeting requirement to the protection of investors and the public interest.¹⁵

¹¹ *Id.*

¹² 15 U.S.C. 78f(b)(5).

¹³ *See, e.g.*, Securities Exchange Act Release Nos. 99238 (Dec. 26, 2023), 89 FR 113, 116 n.21 and accompanying text (Jan. 2, 2024) (SR–NYSE–2023–34) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Sections 312.03(b) and 312.04 of the NYSE Listed Company Manual To Modify the Circumstances Under Which a Listed Company Must Obtain Shareholder Approval of a Sale of Securities Below the Minimum Price to a Substantial Security Holder of the Company); 100816 (Aug. 26, 2024), 89 FR 70674, 70677–78 nn.46–48 and accompanying text (Aug. 30, 2024) (SR–NASDAQ–2024–019) (Order Granting Approval of a Proposed Rule Change, to Rules 5605, 5615 and 5810 To Amend Phase-In Schedules for Certain Corporate Governance Requirements and Applicability of Certain Cure Periods).

¹⁴ *See id.*

¹⁵ The Commission has stated that the right of shareholders to vote at an annual meeting is an essential and important one. *See, e.g.*, Securities Exchange Act Release Nos. 86406 (July 18, 2019), 84 FR 35431, 35432 (July 23, 2019) (SR–NYSE–2019–20) (Order Granting Approval of a Proposed Rule Change Amending Section 302 of the Listed Company Manual To Provide Exemptions for the

Among other things, annual shareholder meetings allow the shareholders of a company the opportunity to elect directors and meet with, and engage, management to discuss company affairs.¹⁶ The Commission has recognized that, in limited circumstances, the exchange requirement to hold an annual shareholder meeting may not be necessary for certain issuers of specific types of securities where the holders of such securities do not directly participate as equity holders or vote in the annual election of directors or generally on the operations or policies of the listed company.¹⁷ However, when approving a prior Exchange proposal for specific exemptions from the annual shareholder meeting requirement, which included an exemption for exchange-traded funds (“ETFs”), the Commission expressly stated that CEFs are still required to hold annual meetings under Section 302.00.¹⁸

The Exchange states in support of its current proposal that there are significant differences between listed CEFs and listed operating companies that justify also exempting listed CEFs from the Exchange’s annual meeting requirement.¹⁹ In particular, the Exchange states that there are significant statutory protections under the 1940 Act provided to the shareholders of CEFs,²⁰

Issuers of Certain Categories of Securities From the Obligation To Hold Annual Shareholders’ Meetings) (“NYSE Order”); 57268 (Feb. 4, 2008), 73 FR 7614, 7616 (Feb. 8, 2008) (SR–Amex–2006–31) (Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to Annual Shareholder Meeting Requirements) (“Amex Order”).

¹⁶ *See, e.g.*, Amex Order at 7614; Securities Exchange Act Release No. 53578 (Mar. 30, 2006), 71 FR 17532 (Apr. 6, 2006) (SR–NASDAQ–2005–073) (Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto Relating to Rule 4350(e) To Amend the Annual Shareholder Meeting Requirement).

¹⁷ *See* NYSE Order at 35432; Amex Order at 7616. The Commission has also stated that where an exchange has exempted issuers of certain categories of securities from the exchange requirement to hold an annual meeting, such issuers would remain subject to any applicable state and federal securities laws that relate to annual meetings and may still be required to hold annual shareholder meetings in accordance with such state and federal securities laws. *See id.* In addition, such issuers would remain subject to state and federal securities laws that may require other types of shareholder meetings, such as special meetings of shareholders. *See* NYSE Order at 35432. The Commission has also stated that the exemptions apply only with respect to particular securities, and that if a company also lists other common stock or voting preferred stock, or their equivalent, such company must nevertheless hold an annual meeting for the holders of such securities during each fiscal year. *See id.* at 35433.

¹⁸ *See* NYSE Order at 35433 n.20. *See also infra* note 27.

¹⁹ *See* Notice, *supra* note 4, at 56447.

²⁰ *See id.* at 56448.

including requirements with respect to the election of directors by CEF shareholders,²¹ a requirement that directors who are not “interested persons”²² comprise at least 40% of the board,²³ requirements that certain specified material matters be approved by a majority of the directors who are not “interested persons,”²⁴ and requirements that certain specified material matters be approved by the shareholders.²⁵ The Exchange states that there are no parallel legal protections for the shareholders of public operating companies.²⁶ The Exchange also states that all of the categories of investment companies for which the Exchange has listing standards other than CEFs are already exempt from the annual shareholder meeting requirement of Section 302.00 (such exempted investment companies, “NYSE-Listed ETFs”).²⁷

The Commission received comments supporting the proposal.²⁸ Some commenters stated that Congress adopted the 1940 Act protections referenced by NYSE in lieu of an annual

shareholder meeting requirement.²⁹ Some commenters agreed with NYSE that 1940 Act requirements, such as those pertaining to director elections, directors who are not “interested persons,” and matters that require shareholder vote, protect CEF investors;³⁰ and some stated that the 1940 Act requirements rendered NYSE’s annual shareholder meeting requirement “superfluous.”³¹ Some commenters also claimed that certain investors exploit the current annual shareholder meeting requirement for their own gain—for example, by launching a proxy campaign to change a CEF’s management and/or investment strategy, to conduct tender offers, or to liquidate the CEF altogether.³² These commenters stated that annual meetings allow a minority investor to have an outsized influence over the CEF that results in harm to long-term retail investors in the CEF and disincentivizes the creation of new listed CEFs.³³ Some commenters also stated that annual shareholder meetings are costly to CEFs and that retail investor engagement at such meetings is limited, and concluded that the burden of the annual shareholder meeting requirement outweighs any potential benefits.³⁴

The Commission also received comments opposing the proposal.³⁵

Some commenters stated that the 1940 Act requirements referenced by the Exchange were adopted in addition to the Exchange’s pre-existing annual shareholder meeting requirement, rather than in lieu of it,³⁶ and some stated that the 1940 Act requirements are not a substitute for annual shareholder meetings.³⁷ Some commenters stated that CEFs are fundamentally different from other registered investment companies, including NYSE-Listed ETFs.³⁸ In particular, commenters stated that CEFs commonly trade at a discount to NAV,³⁹ and claimed that the inability of CEF investors to redeem shares at NAV makes CEF investors more vulnerable to actions by CEF management.⁴⁰ Commenters stated that, in light of these unique features of CEFs, annual meetings are an important tool to discipline CEF management.⁴¹ Commenters also stated that elimination of NYSE’s annual shareholder meeting requirement would harm CEF investors by reducing opportunities for shareholder activism (or the threat of such activism);⁴² further entrenching CEF management;⁴³ potentially increasing CEFs’ discounts to NAV;⁴⁴ and effectively disenfranchising CEF investors due to the infrequency with which shareholder meetings would be required under the 1940 Act⁴⁵ and the difficulty for shareholders to requisition special meetings.⁴⁶ Commenters also described other benefits of annual shareholder meetings to CEF investors, such as providing accountability,

²¹ See *id.* at 56447.

²² The term “interested person” is defined in Section 2(a)(19) of the 1940 Act, 15 U.S.C. 80a-2(a)(19).

²³ See Notice, *supra* note 4, at 56447.

²⁴ See *id.* at 56447–48.

²⁵ See *id.* at 56448.

²⁶ See *id.*

²⁷ See *id.* When justifying its prior proposal to exempt NYSE-Listed ETFs from the annual shareholder meeting requirement of Section 302.00, the Exchange stated, among other things, that the net asset value (“NAV”) of such products is determined by the market price of each fund’s underlying securities or other reference asset; and that because shareholders can value their investments in such products on an ongoing basis, the Exchange believes that there is less need for such shareholders to engage management at an annual meeting. See Securities Exchange Act Release No. 85889 (May 17, 2019), 84 FR 23815, 23816 (May 23, 2019) (SR–NYSE–2019–20) (Notice of Filing of Proposed Rule Change Amending Section 302 of the Listed Company Manual To Provide Exemptions for the Issuers of Certain Categories of Securities From the Obligation To Hold Annual Shareholders’ Meetings). See also NYSE Order at 35432.

²⁸ See, e.g., Letters from Paul G. Cellupica, General Counsel, and Kevin Ercoline, Assistant General Counsel, Investment Company Institute, dated July 30, 2024 (“ICI Letter”); Investment Adviser Association, Securities Industry and Financial Markets Association (“SIFMA”), SIFMA’s Asset Management Group, and Insured Retirement Institute, dated July 30, 2024 (“SIFMA et al Letter”); Bruce Leto and Sara Crovitz, Stradley Ronon Stevens & Young, LLP, dated July 30, 2024 (“Stradley Ronon Letter”); Joseph V. Amato, President and Chief Investment Officer, Equities, Neuberger Berman Group LLC, dated July 30, 2024 (“Neuberger Berman Letter”); John McCann, Managing Director, Associate General Counsel, Teachers Insurance and Annuity Association of America (“TIAA”) and TIAA’s asset management affiliate Nuveen, LLC, dated July 30, 2024 (“TIAA Letter”); George F. Magera, General Counsel, Federated Hermes, Inc., dated July 31, 2024 (“Federated Hermes Letter”).

²⁹ See, e.g., ICI Letter at 7–9; SIFMA et al Letter at 2–3.

³⁰ See, e.g., ICI Letter at 9–13; Letter Type A at <https://www.sec.gov/comments/sr-nyse-2024-35/srnyse202435.htm>; Federated Hermes Letter at 1.

³¹ See, e.g., ICI Letter at 1 and 9; SIFMA et al Letter at 2; Stradley Ronon Letter at 3.

³² See, e.g., ICI Letter at 2–3, 17–24; Neuberger Berman Letter at 1–2; Federated Hermes Letter at 1–2; Stradley Ronon Letter at 1–2; TIAA Letter at 2.

³³ See, e.g., ICI Letter at 13–14; Neuberger Berman Letter at 1–2; Federated Hermes Letter at 1–2; Stradley Ronon Letter at 2; TIAA Letter at 2.

³⁴ See, e.g., ICI Letter at 14–15; Federated Hermes Letter at 2; Letter from George W. Morriss, dated July 31, 2024.

³⁵ See, e.g., Letters from Paul N. Roth, Founding Partner Emeritus, Of Counsel, Schulte Roth & Zabel LLP, dated July 30, 2024 (“Schulte Letter”); Michael D’Angelo, Saba Capital Management, LP, dated July 30, 2024 (“Saba Letter”); Profs. Lucian A. Bebchuk, Harvard Law School, and Robert J. Jackson, Jr., NYU School of Law, dated July 30, 2024 (“Bebchuk & Jackson Letter”); Profs. Daniel J. Taylor, The Wharton School, Edwin Hu, UVA School of Law, Robert Bishop, Duke School of Law, Bradford Levy, Chicago Booth School of Business, Shiva Rajgopal, Columbia Business School, and Jonathan Zytznick, Georgetown University Law Center, on behalf of the Working Group on Market Efficiency and Investor Protection in Closed-End Funds, dated July 30, 2024 (“Working Group Letter”); Bryce A. Doty, Senior Portfolio Manager, Sit Investment Associates, dated July 29, 2024 (“Sit Letter”); Phillip Goldstein, Managing Partner, Bulldog Investors, LLP, dated July 30, 2024 (“Bulldog Letter”); Aaron T. Morris, Partner, Morris Kandinov, dated July 29, 2024 (“Morris Kandinov Letter”); John Y. Park, dated July 29, 2024 (“Park Letter”).

³⁶ See, e.g., Schulte Letter at 2; Bulldog Letter at 1–2.

³⁷ See, e.g., Morris Kandinov Letter at 2–6; Saba Letter at 8–9.

³⁸ See, e.g., Bebchuk & Jackson Letter at 5–7; Sit Letter at 1–2; Letter from Thomas DeCapo, dated July 29, 2024.

³⁹ See, e.g., Working Group Letter at 3; Schulte Letter at 4.

⁴⁰ See, e.g., Bebchuk & Jackson Letter at 5–6; Park Letter; Letters from 1607 Capital Partners, LLC, dated July 30, 2024 (“1607 Letter”); Jon Fenn, dated July 16, 2024.

⁴¹ See, e.g., Bebchuk & Jackson Letter at 7–8; Working Group Letter at 3; Letters from Ronald Mass, Chief Investment Officer, Almitas Capital, dated July 30, 2024, at 2; Andrew Gadlin, dated July 30, 2024.

⁴² A commenter stated that the current annual shareholder meeting mechanism has both a direct effect (e.g., replacing existing fund directors) and indirect effect (e.g., the fear of potential replacement gives incumbent CEF directors incentive to avoid underperformance altogether); and that approval of NYSE’s proposal would produce two types of entrenchment costs from the elimination of these direct and indirect effects. See Bebchuk & Jackson Letter at 7–8 and 10–11.

⁴³ See, e.g., Working Group Letter at 5.

⁴⁴ See, e.g., Working Group Letter at 6; Saba Letter at 1, 2, and 7 n.20; Sit Letter at 2.

⁴⁵ See, e.g., Sit Letter at 2–3; Bebchuk & Jackson Letter at 8–9.

⁴⁶ See, e.g., Working Group Letter at 5; Schulte Letter at 6–7 and n.28; Saba Letter at 2.

transparency, and a forum for shareholders to voice concerns;⁴⁷ and expressed concern with the removal of a right (required annual shareholder meetings) that shareholders may have relied upon when investing in CEFs.⁴⁸

The Commission has concerns about whether NYSE's proposal to exempt CEFs listed under Section 102.04A of the Manual from the annual shareholder meeting requirement set forth in Section 302.00 is designed to protect investors and the public interest, as required by Section 6(b)(5) of the Exchange Act.⁴⁹ Although the Commission previously approved a similar exemption for NYSE-Listed ETFs,⁵⁰ there are important differences between CEFs and ETFs. Shares of CEFs often trade at prices that are less than, or at a "discount" to, the funds' NAV per share. In contrast, while ETFs may trade at a discount, it is often to a much lesser degree than CEFs.⁵¹ Due to these circumstances, shareholders of CEFs may have an interest in expressing their views at annual shareholder meetings.

Moreover, the Commission has concerns with the sufficiency of the Exchange's analysis and whether the Exchange has met its burden to demonstrate that its proposal is consistent with the Exchange Act.⁵² The Exchange states that NYSE-Listed ETFs are already exempt from the annual shareholder meeting requirement of Section 302.00. However, the Exchange does not discuss or explain the

differences between NYSE-Listed ETFs and CEFs, which differences, as discussed above, may result in investor protection concerns for CEF shareholders with respect to eliminating the right to an annual shareholder meeting that may not be present for NYSE-Listed ETFs' shareholders. For example, the Exchange does not discuss whether the fact that CEF shares may trade at a large discount to NAV would raise any investor protection concerns with eliminating the annual shareholder meeting requirement. The Exchange also does not discuss the extent to which CEF investors participate in, and benefit from, annual shareholder meetings, such that eliminating the annual shareholder meeting requirement may raise investor protection concerns. In addition, while the Exchange discusses how certain requirements set forth in the 1940 Act are designed to protect CEF investors and the public interest, the Exchange does not discuss how its specific proposal to exempt CEFs from the Exchange's longstanding annual shareholder meeting requirement—and any resulting loss of benefits to CEF investors of annual shareholder meetings—would be designed to protect CEF investors and the public interest.

As a result, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Exchange Act⁵³ and its requirement, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest. For this reason, it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁵⁴ to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act⁵⁵ or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of

data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Exchange Act,⁵⁶ any request for an opportunity to make an oral presentation.⁵⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 31, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 14, 2024. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-35 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-2024-35. 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 (<https://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

⁴⁷ See, e.g., 1607 Letter; Letters from Andrew Park on behalf of the Americans for Financial Reform Education Fund, dated July 30, 2024, at 2-3; Michael Foster, dated July 16, 2024; James Gould, dated Aug. 6, 2024.

⁴⁸ See, e.g., Schulte Letter at 4; Saba Letter at 2; Bebchuk & Jackson Letter at 12.

⁴⁹ 15 U.S.C. 78f(b)(5).

⁵⁰ See NYSE Order, *supra* note 15.

⁵¹ See Securities Act Release No. 10695, Investment Company Act Release No. 33646, S7-15-18 (Sept. 25, 2019), 84 FR 57162, 57165 (Oct. 24, 2019) (Exchange-Traded Funds Final Rule) ("The combination of the creation and redemption process with secondary market trading in ETF shares and underlying securities provides arbitrage opportunities that are designed to help keep the market price of ETF shares at or close to the NAV per share of the ETF."). See also *supra* note 27.

⁵² Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change." 17 CFR 201.700(b)(3). The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations. *Id.*

⁵³ 15 U.S.C. 78f(b)(5).

⁵⁴ 15 U.S.C. 78s(b)(2)(B).

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 17 CFR 240.19b-4.

⁵⁷ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-35 and should be submitted on or before October 31, 2024. Rebuttal comments should be submitted by November 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-23417 Filed 10-9-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101248; File No. SR-NYSE-2024-61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

October 4, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on September 20, 2024, New York Stock Exchange LLC (“NYSE” 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 self-regulatory organization. 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 the Connectivity Fee Schedule (“Fee Schedule”) to delete the currently-filed “Optic Low Latency Circuit—1 Gb”

service as obsolete. 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 Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) to delete the currently-filed “Optic Low Latency Circuit—1 Gb” service as obsolete.

In 2023, the Exchange filed to amend the Fee Schedule to add several “FIDS Circuits” available at the Mahwah, New Jersey data center (“MDC”),⁴ including Optic Low Latency Circuits in 1 Gb, 10 Gb, and 40 Gb sizes.⁵

Since that time, no Users⁶ have opted to utilize the 1 Gb Optic Low Latency Circuit. Some market participants have informed the Exchange that the 1 Gb size of the Optic Low Latency Circuit is

⁴ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (together, the “Affiliate SROs”) are indirect subsidiaries of ICE.

⁵ See Securities Exchange Act Release No. 99165 (December 13, 2023), 88 FR 87832 (December 19, 2023) (SR-NYSE-2023-48).

⁶ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSEAMER-2024-59, SR-NYSEARCA-2024-81, SR-NYSECHX-2024-30, and SR-NYSESTAT-2024-27.

too small for their needs. Because there is no customer demand for the 1 Gb Optic Low Latency Circuit, the Exchange proposes to discontinue the service as obsolete.

General

The proposed changes would not apply differently to distinct types or sizes of market participants; rather, they would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. The proposed changes are not intended to address any other issues and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, because it is 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that discontinuing offering the 1 Gb Optic Low Latency Circuit would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest. Demand for the 1 Gb Optic Low Latency Circuit is non-existent and there are currently no customers that subscribe to the service. The Exchange does not expect demand to rebound given customers’ assessment that the 1 Gb-size of the circuit is too small for their needs. Removing references to the fees for this obsolete service from the Fee Schedule would make the Fee Schedule easier to read, understand, and administer.

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest. The proposed rule change would delete an obsolete service from the Fee Schedule,

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁵⁸ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.