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BLOG

The NYSE Proposes Rule Allowing It To Delist Companies That Change Their Primary Business Focus

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THE PROPOSED RULE

On April 17, 2024, the New York Stock Exchange (NYSE) proposed a rule that, if adopted by the U.S. Securities and Exchange Commission (SEC), would amend Section 802.01D of the NYSE Listed Company Manual to provide the NYSE with discretionary authority to commence immediate suspension and delisting proceedings for a listed company that has “changed its primary business focus to a new area of business that is substantially different from the business it was engaged in at the time of its original listing or which was immaterial to its operations at the time of its original listing.”

The NYSE notes that it would commence delisting under such rule only after “a careful analysis of the company’s suitability for continued listing, taking into account all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the company” that accompanied the change in primary business focus. Such analysis will not involve applying quantitative standards for initial listing but instead will focus on the qualitative aspects of a company’s suitability for listing, with an eye toward whether such company would have been accepted for listing if it had its new primary business focus at the time of its initial listing.

RATIONALE FOR THE PROPOSED RULE

The NYSE expressed concern that investors who acquire stock of a company (including in an IPO) prior to its change in primary business focus may not have done so had they been aware that the company would change its primary business focus. In addition, the NYSE stated that such a change may raise concerns about whether the company would have been suitable for listing had it been engaged in its new primary business focus at the time of its original listing application. The NYSE also noted that, in some cases, there has been a significant decline in a company’s stock price subsequent to its change in business focus, ultimately leading to investor losses and an inability to meet continued listing standards.

As an example, the NYSE cited the case of Bit Brother, a formerly Nasdaq-listed company that announced a change in its primary business focus from selling tea products to cryptocurrency in February 2021. Subsequently, the company’s stock price declined and, despite three reverse stock splits, was ultimately delisted from Nasdaq in February 2024.

KEY TAKEAWAYS

If the proposed rule is adopted, the NYSE expects that it will "seldom" invoke its new discretionary authority. That said, what constitutes a "substantially different" primary business focus may not be readily apparent in all cases, adding a layer of uncertainty. If the NYSE undertakes a delisting action under the proposed rule, NYSE-listed companies should learn the specific facts involved to gain a better understanding of the "substantially different" standard. Additionally, if the proposed rule is adopted, any NYSE-listed company considering a shift in business focus should be aware that it could trigger scrutiny and should consider how such a shift would be viewed by the NYSE if it decides to conduct a fresh qualitative assessment of the company's suitability for listing.

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