

Direct Listing of Securities: Going Public Without an IPO

Registration Requirements, New NYSE Valuation Criteria, Pros and Cons, Lessons From Spotify

WEDNESDAY, MAY 23, 2018

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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NYSE IM-18-02

March 28, 2018

To: New York Stock Exchange LLC (“NYSE”) Members and Member Organizations

From: NYSE Regulation

Subject: NYSE Rule 15, 104, and 123D Rule Changes Relating to NYSE Direct Listings

The NYSE (the “Exchange”) may list the securities of companies that have not previously had their common equity securities registered under the Securities Exchange Act of 1934 (“Exchange Act”). The Exchange’s listing qualifications recognize that such companies may wish to list their common equity securities on the Exchange at the time a registration statement is effective (an “NYSE Direct Listing”). The registration statement allows existing shareholders of the company to sell their shares.¹ The Exchange recently received Securities and Exchange Commission approval to allow the Exchange to list a company’s common stock upon effectiveness of a registration statement solely on the basis of a recent independent third-party valuation indicating that the company has at least \$250 million in market value of publicly-held shares. This change allows the Exchange to list a company’s securities in the absence of trading on a Private Placement Market,² provided the company is clearly large enough to be suitable for listing on the Exchange.³

In connection with this change to its listing qualifications, the Exchange also changed its Rules 15 and 104 relating to the opening process for an NYSE Direct Listing and amended NYSE Rule 123D to provide the Exchange authority to issue a regulatory halt for a security that has its initial pricing on the Exchange.

NYSE Rule 15

NYSE Rule 15 sets forth the requirements for a pre-opening indication, which is the price range within which the opening price for a security is anticipated to occur. Pre-opening indications are published each morning via the securities information processor (“SIP”) and proprietary data feeds. The Designated Market Maker (“DMM”) assigned to a security is required to publish a pre-opening indication as follows:

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- 1 Note (E) to Section 102.01B of the NYSE Listed Company Manual (“LCM”).
 - 2 A Private Placement Market is defined in Note (E) to Section 102.01B of the LCM as a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer.
 - 3 See Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (SR-NYSE-2017-30) (Approval Order) (the “NYSE Floor Direct Listing Filing”). Footnote E to Section 102.01B of the LCM sets forth the requirements for a company seeking to list as a NYSE Direct Listing.

- If the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range” from a specified “Reference Price,” the DMM must publish a pre-opening indication before a security opens. Rule 15(d) establishes the Applicable Price Range as 5% for securities with a Reference Price over \$3.00 and as \$0.15 for securities with a Reference Price equal to or lower than \$3.00.⁴
- If a security has not opened by 10:00 a.m. Eastern Time, the DMM must publish a pre-opening indication.

To accommodate NYSE Direct Listings, the Exchange recently received SEC approval for changes to the definition of Reference Price in NYSE Rule 15(c). Accordingly, for purposes of determining whether a DMM is required to publish a pre-opening indication, the Reference Price for a security is:

- for securities already trading on the Exchange, the last reported sale price on the Exchange;
- for IPOs, the offering price;
- for securities transferring from another Exchange, the last reported sale price on the securities market from which the security is being transferred;
- for an NYSE Direct Listing that has had recent sustained trading in a Private Placement Market, the most recent transaction price in that market; or
- for an NYSE Direct Listing for which there has not been sustained trading in a Private Placement Market, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.

NYSE Rule 104

NYSE Rule 104 sets forth the responsibilities and duties of a DMM, including the DMM’s responsibility for facilitating openings and reopenings for each security in which the DMM is registered. In connection with facilitating openings and reopenings, a DMM is required to supply liquidity as needed.

The SEC recently approved changes to Exchange Rule 104(a)(2) to provide that, when facilitating the opening on the first day of trading of an NYSE Direct Listing that has not had recent sustained history of trading in a Private Placement Market prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security. The requirement to consult with a financial advisor to the issuer is thus required only if there is not a sustained history of trading in a Private Placement Market.

NYSE Rule 123D

Sections 202.06 and 202.07 of the LCM set forth the Exchange’s procedures for when trading in a listed security should be halted or delayed, i.e., a regulatory halt. The SEC recently approved new sub-paragraph (d) of Exchange Rule 123D to allow the Exchange to declare a regulatory halt in a

⁴ The Applicable Price Range is doubled if, as of 9:00 a.m. Eastern Time, the E-mini S&P Futures are +/- 2% from the prior day’s closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide circuit breaker halt, or if the Exchange determines it is necessary or appropriate for the maintenance of a fair and orderly market.

security that is the subject of an initial pricing on the Exchange if that security has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing. The Exchange may declare such an Initial Listing Regulatory Halt for NYSE Direct Listings and other initial listings on the Exchange, such as spin-offs, mergers that result in the creation of a new company, or companies emerging from bankruptcy that create a new security.

This regulatory halt condition will be terminated when the DMM opens the security. The NYSE would declare such a regulatory halt before 4:00 a.m. Eastern Time, which would mean that there would be no trading in this stock on other exchanges or in over-the-counter trading until the DMM opens the security on either a quote or a trade.

Rule Text Changes

The following are the changes that were made to Rules 15, 104, and 123D in connection with the NYSE Direct Listing Filing. New text is underlined, and deleted text is bracketed.

Rule 15. Pre-Opening Indications and Opening Order Imbalance Information

(c) Reference Price.

- (1) The Reference Price for a security, other than an American Depositary Receipt ("ADR"), will be:
 - (A) the security's last reported sale price on the Exchange;
 - (B) the security's offering price in the case of an initial public offering ("IPO");
[or]
 - (C) the security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange ("transferred security")~~].~~or
 - (D) for a security that is listed under Footnote (E) to Section 102.01B of the Listed Company Manual that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.

Rule 104. Dealings and Responsibilities of DMMs

(a) DMMs registered in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. The responsibilities and duties of a DMM specifically include, but are not limited to, the following:

- (2) Facilitate openings and reopenings, including the Midday Auction, for each of the securities in which the DMM is registered as required under Exchange rules. This may include supplying liquidity as needed. (See Rule 123D for additional responsibilities of DMMs with respect to openings and Rule 13 with

respect to Reserve Order interest procedures at the opening.) DMM and DMM unit algorithms will have access to aggregate order information in order to comply with this requirement. (See Supplementary Material .05 of this 104 with respect to odd-lot order information to the DMM unit algorithm.) When facilitating the opening on the first day of trading of a security that is listed under Footnote (E) to Section 102.01B of Listed Company Manual and that has not had recent sustained history of trading in a Private Placement Market prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.

Rule 123D. Openings and Halts in Trading

(d) Initial Listing Regulatory Halt. The Exchange may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing. This regulatory halt will be terminated when the DMM opens the security.

(e) Equipment Changeover.—The Exchange has established a non-regulatory trading halt condition designated as "Equipment Changeover".

This condition may be used when trading in a particular security is temporarily inhibited due to a systems, equipment or communications facility problem or for other technical reasons.

In making a determination on whether to halt trading in a security because of an "Equipment Changeover" condition, it is important to keep in mind that once halted, trading cannot be resumed for at least one minute even though, in many cases, the systems or equipment problem may be corrected in a much shorter period of time. Further, if, during the "Equipment Changeover" trading halt, a pre-opening indication would be required to be published or a regulatory condition occurs, the nature of the halt will be changed, notice must be disseminated and trading cannot resume until three minutes after the first indication after the new halt condition. This factor should be taken into consideration along with market condition factors in making a determination on whether to declare an official trading halt.

All other policies relating to nonregulatory halts would apply including price indications.

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82627; File No. SR-NYSE-2017-30)

February 2, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, to Amend Section 102.01B of the NYSE Listed Company Manual to Provide for the Listing of Companies that List Without a Prior Exchange Act Registration and that Are Not Listing in Connection with an Underwritten Initial Public Offering and Related Changes to Rules 15, 104, and 123D

I. Introduction

On June 13, 2017, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to amend Section 102.01B of the NYSE Listed Company Manual to modify the provisions relating to the qualification of companies listing without a prior Exchange Act registration in connection with an underwritten initial public offering and amend Exchange rules to address the opening procedures on the first day of trading of such securities. The proposal, as modified by Amendment No. 3, would: (i) eliminate the requirement in Footnote (E) of Section 102.01B (“Footnote (E)”) of the Manual to have a private placement market trading price if there is a valuation from an independent third-party of \$250 million in market value of publicly-held shares; (ii) set forth several factors indicating when the independent third party providing the valuation would not be deemed “independent” under Footnote (E); (iii) amend NYSE Rule 15 to add a reference price for when a security is listed under Footnote (E); (iv) amend NYSE Rule 104 to specify Designated Market Maker (“DMM”) requirements when facilitating the opening

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

of a security listed under Footnote (E) when there has been no sustained history of trading in a private placement trading market for such security; and (v) amend NYSE Rule 123D to specify that the Exchange may declare a regulatory halt prior to opening a security that is the subject of an initial pricing upon Exchange listing and that has not, immediately prior to such initial pricing, traded on another national securities exchange or in the over-the-counter market.

The proposed rule change was published for comment in the Federal Register on June 20, 2017.⁴ The Commission received one comment in response to the Original Notice.⁵ The Exchange filed Amendment No. 1 to the proposed rule change on July 28, 2017, which, as noted below, was later withdrawn. On August 3, 2017, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to September 18, 2017.⁶

On August 16, 2017, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety.⁷ The Commission published Amendment No. 2 for comment in the Federal Register on August 24, 2017.⁸ The Commission received no comments in response to this solicitation for comments. On September 15, 2017, the Commission instituted proceedings to determine

4 See Securities Exchange Act Release No. 80933 (June 15, 2017), 82 FR 28200 (June 20, 2017) (“Original Notice”).

5 See letter to the Commission from James J. Angel, Ph.D., CFA, Georgetown University, dated July 28, 2017 (“Angel Letter”).

6 See Securities Exchange Act Release No. 81309 (August 3, 2017), 82 FR 37244 (August 9, 2017).

7 See Notice, infra note 8, at n. 8, which describe the changes proposed in Amendment No. 2 from the original proposal.

8 See Securities Exchange Act Release No. 81440 (August 18, 2017), 82 FR 40183 (August 24, 2017) (“Notice”).

whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.⁹ Following the Order Instituting Proceedings, the Commission received one additional comment letter.¹⁰ On December 8, 2017, the Exchange filed Amendment No. 3 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety.¹¹ On December 14, 2017, the Commission extended the time period for approving or disapproving the proposal for an additional 60 days until February 15, 2018.¹² The Commission is publishing this notice to solicit comment on Amendment No. 3 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 3

1. Listing Standards

Generally, Section 102 of the Manual sets forth the minimum numerical standards for domestic companies, or foreign private issuers that choose to follow the domestic standards, to list equity securities on the Exchange. Section 102.01B of the Manual requires a listed company

⁹ See Securities Exchange Act Release No. 81640 (September 15, 2017), 82 FR 44229 (September 21, 2017) (“Order Instituting Proceedings”).

¹⁰ See letter to Brent J. Fields, Commission, from Cleary Gottlieb Steen & Hamilton LLP, dated October 12, 2017 (“Cleary Gottlieb Letter”).

¹¹ Amendment No. 3 revised the proposal to eliminate the proposed changes to Footnote (E) that would have allowed a company to list immediately upon effectiveness of an Exchange Act registration statement only, without any concurrent IPO or Securities Act of 1933 (“Securities Act”) registration. Except for removing this part of the proposal, the remaining proposed amendments in Amendment No. 3 are identical to those noticed for comment in Amendment No. 2. Amendment No. 3 also contained a complete restated Form 19b-4 under the Exchange Act, which contained the same discussions, statutory basis and other sections set forth in Amendment No. 2, with slight modifications to take into account the deleted provision. Amendment No. 3 is available at: <https://www.sec.gov/comments/sr-nyse-2017-30/nyse201730-2782322-161654.pdf>.

¹² See Securities Exchange Act Release No. 82332 (December 14, 2017), 82 FR 60442 (December 20, 2017).

to demonstrate at the time of listing an aggregate market value of publicly-held shares of either \$40 million or \$100 million, depending on the type of listing.¹³ Section 102.01B also states that, in these cases, the Exchange relies on written representations from the underwriter, investment banker, or other financial advisor, as applicable, with respect to this valuation.¹⁴ While Footnote (E) states that the Exchange generally expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off, Section 102.01B of the Manual also contemplates that companies that have not previously had their common equity securities registered under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list their common equity securities on the Exchange at the time of effectiveness of a registration statement¹⁵ filed solely for the purpose of allowing existing shareholders to sell their shares.¹⁶ Specifically, Footnote (E) permits the Exchange, on a case by case basis, to exercise discretion to list such companies and provides that the Exchange will determine that such a company has met the \$100 million aggregate market

13 Section 102.01B of the Manual states that a company must demonstrate “an aggregate market value of publicly-held shares of \$40,000,000 for companies that list either at the time of their initial public offerings (“IPO”) (C) or as a result of spin-offs or under the Affiliated Company standard or, for companies that list at the time of their Initial Firm Commitment Underwritten Public Offering (C), and \$100,000,000 for other companies (D)(E).” Section 102.01B also requires a company to have a closing price, or if listing in connection with an IPO or Initial Firm Commitment Underwritten Public Offering, an IPO or Initial Firm Commitment Underwritten Public Offering price per share of at least \$4.00 at the time of initial listing.

14 See Section 102.01B, Footnote (C) of the Manual, which states that for companies listing at the time of their IPO or Initial Firm Commitment Underwritten Public Offering, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company’s offering. For spin-offs, the Exchange will rely on a representation from the parent company’s investment banker (or other financial advisor) in order to estimate the market value based upon the distribution ratio.

15 The reference to a registration statement refers to a registration statement effective under the Securities Act.

16 See Section 102.01B, Footnote (E) of the Manual.

value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (a “Valuation”)¹⁷ of the company and (ii) the most recent trading price for the company’s common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a “Private Placement Market”).¹⁸ Under the current rules, the Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market.¹⁹

The Exchange proposed two changes to Footnote (E). First, the Exchange proposed to amend Footnote (E) to provide that, in the absence of any recent trading in a Private Placement Market, the Exchange will determine that a company has met its market value of publicly-held shares requirement if the company provides a recent Valuation evidencing a market value of publicly-held shares of at least \$250 million.²⁰ In proposing this change, the Exchange expressed the view that the current requirement of Footnote (E) to rely on recent Private Placement Market trading in addition to a Valuation may cause difficulties for certain companies that are otherwise

¹⁷ See Section 102.01B, Footnote (E) of the Manual, which sets forth specific requirements for the Valuation. Among other factors, any Valuation used for purposes of Footnote (E) must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations.

¹⁸ Section 102.01B, Footnote (E) of the Manual also sets forth specific factors for relying on a Private Placement Market price, and states that the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on such market if it is “consistent with a sustained history [of trading] over that several month period.”

¹⁹ See Section 102.01B, Footnote (E) of the Manual.

²⁰ See proposed Section 102.01B, Footnote (E) of the Manual. The Commission notes that the Exhibit 5 to Amendment No. 3 contains the proposed rule language. Any references herein to the proposed rule language shall refer to the language available in Exhibit 5 to Amendment No. 3, which is available from the Exchange or on the Commission’s website www.sec.gov. See also Notice, *supra* note 8.

clearly qualified for listing.²¹ The Exchange stated that some companies that are clearly large enough to be suitable for listing on the Exchange do not have their securities traded at all on a Private Placement Market prior to going public and, in other cases, the Private Placement Market trading is too limited to provide a reasonable basis for reaching conclusions about a company's qualification.²² In proposing to adopt a Valuation that must be at least two-and-a-half times the \$100 million requirement of Section 102.01B of the Manual, the Exchange stated that this amount "will give a significant degree of comfort that the market value of the company's shares will meet the [\$100 million] standard upon commencement of trading on the Exchange," particularly because any such Valuation "must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations."²³

Second, the Exchange proposed to further amend Footnote (E) by establishing certain criteria that would preclude a valuation agent from being considered "independent" for purposes of Footnote (E), which the Exchange believes will provide a significant additional guarantee of the independence of any entity providing such a Valuation.²⁴ Specifically, the Exchange proposed that a valuation agent will not be deemed to be independent if:

- At the time it provides such Valuation, the valuation agent or any affiliated person
or persons beneficially own in the aggregate as of the date of the Valuation, more
than 5% of the class of securities to be listed, including any right to receive any

21 See Notice, supra note 8, at 40184.

22 See id.

23 Id. In its proposal, the Exchange stated that it believed that it is unlikely that any Valuation would reach a conclusion that was incorrect to the degree necessary for a company using this provision to fail to meet the \$100 million requirement upon listing, in particular because any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. See id.

24 See id.

such securities exercisable within 60 days;

- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the Valuation;²⁵ or
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.²⁶

2. Trading Rules

The Exchange also proposed to amend Exchange Rules 15, 104 and 123D, governing the opening of trading, to specify procedures for the opening trade on the day of initial listing of a company that lists under the proposed amendments to Footnote (E) and did not have any recent trading in a Private Placement Market.²⁷

Rule 15(b) provides that a DMM will publish a pre-opening indication²⁸ before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a

²⁵ For purposes of this provision, “investment banking services” includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting. See proposed Section 102.01B, Footnote (E) of the Manual.

²⁶ See id.

²⁷ See Notice, supra note 8, at 41085.

²⁸ Rule 15(a) states that a pre-opening indication will include the security and the price range within which the opening price is anticipated to occur. Pre-opening indications are published on the Exchange’s proprietary data feeds and the securities information processor (“SIP”). See Rule 15(a). The Exchange may also publish order imbalance information prior to the opening of a security. The order imbalance information contains the price at which opening interest may be executed in full. See Rule 15(g).

change of more than the “Applicable Price Range,”²⁹ from a specified “Reference Price.”³⁰ Rule 15(c)(1) specifies that the Reference Price for a security (other than an American Depository Receipt) would be either (A) the security’s last reported sale price on the Exchange; (B) the security’s offering price in the case of an IPO; or (C) the security’s last reported sale price on the securities market from which the security is being transferred to the Exchange.³¹

The Exchange proposed to amend Rule 15(c)(1) to add new sub-paragraph (D) to specify the Reference Price for a security that is listed under Footnote (E). The Exchange proposed that if such security has had recent sustained trading in a Private Placement Market prior to listing, the Reference Price in such scenario would be the most recent transaction price in that market or, if no such sustained trading has occurred, the Reference Price used would be a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.³²

Rule 104(a)(2) provides that the DMM has a responsibility for facilitating openings and reopenings for each of the securities in which the DMM is registered as required under Exchange rules, which includes supplying liquidity as needed. The Exchange proposed to amend Rule 104(a)(2) to require the DMM to consult with the issuer’s financial advisor when facilitating the opening on the first day of trading of a security that is listing under Footnote (E) and that has not had recent sustained history of trading in a Private Placement Market prior to listing, in order to effect a fair and orderly opening of such security.³³

29 See Rule 15(d) for a definition of “Applicable Price Range.”

30 Rule 15(b) also provides that a DMM will publish a pre-opening indication if a security has not opened by 10:00 a.m. Eastern Time. See Rule 15(c) for a definition of “Reference Price.”

31 See Rule 15(c)(1).

32 See proposed Rule 15(c)(1)(D).

33 See proposed Rule 104(a)(2). The Exchange stated that this requirement is based in part on Nasdaq Rule 4120(c)(9), which requires that a new listing on Nasdaq that is not an

The Exchange stated that it believes that such a financial advisor would have an understanding of the status of ownership of outstanding shares in the company and would have been working with the issuer to identify a market for the securities upon listing.³⁴ As a result, it believes such financial advisor would be able to provide input to the DMM regarding expectations of where such a new listing should be priced, based on pre-listing selling and buying interest and other factors that would not be available to the DMM through other sources.³⁵

In its proposal, the Exchange stated that the proposed amendments to both Rule 15 and Rule 104 are designed to provide DMMs with information to assist them in meeting their obligations to open a new listing under the proposed amended text of Footnote (E).³⁶

The Exchange further proposed to amend its rules to provide authority to declare a regulatory halt for a non-IPO new listing. As proposed, Rule 123D(d) would provide that the Exchange may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange and that has not been listed on a national securities exchange or traded in the over-the-

IPO have a financial advisor willing to perform the functions performed by an underwriter in connection with pricing an IPO on Nasdaq. See Notice, supra note 8, at 40185.

³⁴ See Notice, supra note 8, at 40185.

³⁵ See id. The Exchange noted that despite the proposed obligation to consult with the financial advisor, the DMM would remain responsible for facilitating the opening of trading of such security, and the opening of such security must take into consideration the buy and sell orders available on the Exchange's book. See id. Accordingly, the Exchange stated that just as a DMM is not bound by an offering price in an IPO, and will open such a security at a price dictated by the buying and selling interest entered on the Exchange in that security, a DMM would not be bound by the input he or she receives from the financial advisor. See id. at 40185-86.

³⁶ See id. at 40186.

counter market pursuant to FINRA Form 211 immediately prior to the initial pricing.³⁷ In addition, proposed Rule 123D(d) would provide that this regulatory halt would be terminated when the DMM opens the security.³⁸ The Exchange stated its belief that it would be consistent with the protection of investors and the public interest for the Exchange, as a primary listing exchange, to have the authority to declare a regulatory halt for a security that is the subject of a non-IPO listing because it would ensure that a new listing that is not the subject of an IPO could not be traded before the security opens on the Exchange.³⁹

III. Summary of Comments

The Commission received two comments on the proposed rule change.⁴⁰ Both commenters supported the proposal.

One commenter urged the Commission to approve the proposal promptly and without further delay.⁴¹ This commenter stated the belief that there is no public interest served in excluding the listing of a large company with many investors that does not need to raise

³⁷ See proposed Rule 123D(d). The Exchange proposed to renumber current subsection (d) of Rule 123D as subsection (e). See proposed Rule 123D(e).

³⁸ See proposed Rule 123D(d). The Exchange stated that proposed Rule 123D(d) is based in part on (i) Nasdaq Rule 4120(c)(9), which provides that the process for halting and initial pricing of a security that is the subject of an IPO on Nasdaq is also available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market immediately prior to the initial public offering, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Nasdaq Rule 4120(c)(7)(B) that are performed by an underwriter with respect to an initial public offering; and (ii) Nasdaq Rule 4120(c)(8)(A), which provides that such halt condition shall be terminated when the security is released for trading on Nasdaq. See Notice, supra note 8, at 40186.

³⁹ See Notice, supra note 8, at 40186.

⁴⁰ See Angel Letter, supra note 5, and Cleary Gottlieb Letter, supra note 10.

⁴¹ See Angel Letter, supra note 5, at 1.

additional capital through an IPO.⁴² The commenter further stated that in determining whether a company is large enough to meet the listing standards, if a company were to trade at a market capitalization far below the thresholds, the harm would be to the Exchange’s reputation, not to the investing public.⁴³ The commenter further discussed concerns about how NYSE will open the market for a security under the proposal when there is no reliable previous price or offering price.⁴⁴ The commenter stated that if NYSE gets the “offering price ‘wrong,’ the secondary market trading will quickly find the market price at which supply equals demand within a few minutes if not a few seconds.”⁴⁵

The other commenter also supported the proposal.⁴⁶ The commenter stated that, in terms of the lack of an offering price or price range for the securities, the factors that typically underpin the price determination in an IPO are all publicly available, such as knowledge of “comparable public companies and the trading prices of their shares and the corresponding financial metrics of the new issuer.”⁴⁷ The commenter also stated that, in any case, “the opening price will be quickly adjusted through normal market forces.”⁴⁸ Further, the commenter also did not believe

42 See id. at 2.

43 See id. at 3.

44 See id.

45 Id.

46 See Cleary Gottlieb Letter, supra note 10, submitted in response to the Order Instituting Proceedings. Several of the comments from this commenter focused on the Exchange’s proposal to allow a company to list on the Exchange immediately upon effectiveness of an Exchange Act registration statement without any concurrent Securities Act registration. In Amendment No. 3, the Exchange removed this aspect of its proposal from its proposed rule change. Therefore, those comments that related solely to the deleted portion of the Exchange proposal are not relevant to the amended proposal. See Amendment No. 3, supra note 11.

47 Cleary Gottlieb Letter, supra note 10, at 3.

48 Id.

that the lack of information on the number of shares that will likely be made available for sale was an issue because although the “absence of a certain block of shares offered at the outset necessarily creates greater uncertainty..., that concern seems to be reasonably mitigated by the practical reality that an issuer is unlikely to incur the cost – both out of pocket and in management time – of undertaking an exchange listing without having sounded out its shareholders about their general interest in possibly selling shares.”⁴⁹

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.⁵⁰ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Exchange Act,⁵¹ 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. Section 6(b)(5) of the Exchange Act⁵² also requires that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has consistently recognized the importance of exchange listing standards. Among other things, such listing standards help ensure that exchange listed

⁴⁹ Id.

⁵⁰ 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).

⁵¹ 15 U.S.C. 78f(b)(5).

⁵² Id.

companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.⁵³

The Exchange has stated that it typically expects a company to list in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off.⁵⁴ The Exchange listing standards currently contain a provision, approved in 2008, that gives the Exchange discretion to list companies upon effectiveness of a registration statement under the Securities Act that is filed solely for the purpose of allowing existing shareholders to resell shares they obtained in earlier private placements if such companies can evidence \$100 million of publicly held shares based on the lesser amount from a Valuation provided by an independent third party or the price in a Private Placement Market.⁵⁵

53 The Commission has stated in approving exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.*, Securities Exchange Act Release Nos. 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR-NYSE-2017-31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR-NYSE-2017-11). The Commission notes that, in general, adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest.

54 *See* Notice, *supra* note 8, at 40183.

55 According to the Exchange, companies listing their securities upon a selling shareholder registration statement have sold securities in one or more private placements and do not wish to raise cash in an offering at the time of listing, unlike a company listing in conjunction with its IPO. Because the Exchange believed such companies meeting all other listing standards should not be barred from listing, the Exchange proposed Footnote (E) to the listing standards which the Commission approved in 2008. In proposing Footnote (E) in 2008, the Exchange stated that with such companies, there is no public trading market to rely on to evaluate whether the company meets the market value standard as with a company transferring from another market, nor is there a public offering whose price would provide the basis for a letter of the type typically provided by

As noted above, the Exchange has proposed to provide an alternative in cases where there is not sufficient Private Placement Market trading to establish a reliable price. The Exchange has also proposed additional standards concerning the independence of the third party agent providing the Valuation.

The Commission believes that the proposed rule change will provide a means for a category of companies with securities that have not previously been traded on a public market and that are listing only upon effectiveness of a selling shareholder registration statement, without a related underwritten offering, and without recent trading in a Private Placement Market, to list on the Exchange. In particular, for such companies that otherwise meet NYSE's listing standards,⁵⁶ the proposed rule change will provide that, in the absence of any recent trading in a Private Placement Market, the Exchange will determine that such company has met its market value of publicly-held shares requirement if the company provides a Valuation from an independent third party evidencing a market value of publicly-held shares of at least \$250 million. According to the Exchange, "[a]dopting a requirement that the Valuation must be at least two-and-a-half times the \$100 million requirement will give a significant degree of comfort that the market value of the company's shares will meet the standard upon commencement of

underwriters for companies listing in conjunction with an IPO. See Section 102.01B, Footnote (E); Securities Exchange Act Release No. 58550 (September 15, 2008), 73 FR 54442, 54442-43 (September 19, 2008) (SR-NYSE-2008-68) ("NYSE 2008 Order"). See also notes 18-19 supra and accompanying text, describing the requirements in current rule to be able to rely on a Private Placement Market.

⁵⁶ Companies listing upon an effective registration statement would have to meet the distribution requirements set forth in Section 102.01A (i.e., that the company have 400 beneficial holders of round lots of 100 shares and 1,100,000 publicly-held shares), the requirements of Section 102.01B (which includes a \$4.00 price requirement at the time of initial listing), and one of the financial standards set forth in Section 102.01C of the Manual (i.e., the Earnings Test or the Global Market Capitalization Test), as well as comply with all other applicable NYSE rules, including the corporate governance requirements.

trading on the Exchange.”⁵⁷ The Commission believes that requiring a company that does not have a recent and sustained history of trading of its securities in a Private Placement Market to provide a Valuation of at least \$250 million should provide the Exchange with a reasonable level of assurance that the company’s market value supports listing on the Exchange and the maintenance of fair and orderly markets thereby protecting investors and the public interest in accordance with Section 6(b)(5) of the Exchange Act.

Exchange rules also seek to ensure that the Valuation is reliable by requiring it to be provided by an independent third party that has significant experience and demonstrable competence in providing valuations of companies.⁵⁸ The proposed rule change establishes additional independence criteria, pursuant to which the valuation agent will not be “independent” if the valuation agent, or any affiliated person, owns in the aggregate more than 5% of the securities to be listed,⁵⁹ or has provided investment banking services to the company in the 12 months prior to the Valuation or in connection with the listing.⁶⁰ The Commission believes that, consistent with Section 6(b)(5) of Exchange Act and the protection of investors, these new independence requirements should help to ensure that the Valuation is reliable.⁶¹

⁵⁷ See Notice, supra note 8, at 40184. Further, in approving Footnote (E) in 2008, the Commission recognized that “the most recent trading price in a Private Placement Market may be an imperfect indication as to the value of a security upon listing, in part because the Private Placement Markets generally do not have the depth and liquidity and price discovery mechanisms found on public trading markets.” NYSE 2008 Order, supra note 55, at 54443.

⁵⁸ See Footnote (E) for additional requirements for the Exchange to be able to rely on the Valuation.

⁵⁹ This calculation of ownership will include any right to receive such securities exercisable within 60 days.

⁶⁰ See supra notes 24-26, and accompanying text.

⁶¹ The Commission also notes that companies listing pursuant to the new proposed provision will be required to meet the distribution requirements of Section 102.01A of the Manual, the requirements of Section 102.01(B) of the Manual, and one of the financial

The Exchange also has proposed to amend certain of its procedures to address how the DMM is to establish the Reference Price in connection with the opening, on the first day of trading, of a security listed under Footnote (E).⁶² Specifically, for a security with sustained trading in a Private Placement Market, the Reference Price will be the most recent transaction price in that market; otherwise the Reference Price will be determined by the Exchange in consultation with a financial advisor to the issuer. The DMM will also be required to consult with the financial advisor to the issuer where there is no recent sustained history of trading in order to effect a fair and orderly opening of such security.⁶³ The Commission believes that the proposed changes should help establish a reliable Reference Price, and provide additional information to the DMM, and thereby facilitate the opening by the DMM, when trading first commences on the Exchange for certain securities not listed in connection with an underwritten IPO, and should help to promote fair and orderly markets. The Commission believes these changes, consistent with Section 6(b)(5) of the Exchange Act, are reasonably designed to protect investors and the public interest and promote just and equitable principles of trade for the opening of securities listed under the new standards.

standards in Section 102.01C of the Manual, which are the same requirements that apply to most equity listings on the Exchange. See note 56, supra.

⁶² Under Rule 15 a DMM is required to publish a pre-opening indication before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range” from a specified Reference Price. Under Rule 15, for example, the “Applicable Price Range” for determining whether to publish a pre-opening indication is 5% for securities with a Reference Price over \$3.00.

⁶³ In its proposal, the Exchange stated that such “financial advisor would be able to provide input to the DMM regarding expectations of where such a new listing should be priced, based on pre-listing selling and buying interest and other factors that would not be available to the DMM through other sources.” See Notice, supra note 8, at 40185.

Finally, the Exchange has proposed that it be permitted to declare a regulatory halt in certain securities that are the subject of an initial pricing on the Exchange, and have not been listed on an exchange or quoted in an over-the-counter quotation medium immediately prior thereto. Such regulatory halt will be terminated when the DMM opens the security, and is for the limited purpose of precluding other markets from trading a security until the Exchange has completed the initial pricing process. The Commission believes this proposed change also should facilitate the initial opening by the DMM of certain securities not listed in connection with an underwritten IPO, and thereby promote fair and orderly markets and the protection of investors.⁶⁴

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Exchange Act.

V. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-30 on the subject line.

⁶⁴ The proposed regulatory halt allows the Exchange to have a similar opening procedure for securities listed pursuant to Footnote (E) as an IPO security under Section 12(f) of the Exchange Act and Rule 12f-2, since such securities raise similar issues in terms of initial pricing on the first day of trading. See 15 U.S.C. 78l(f); 17 CFR 240.12f-2. Similar to unlisted trading privilege rules that prevent other exchanges from trading an IPO security until the primary listing market has reported the first opening trade, the regulatory halt will allow the DMM to complete the initial pricing and open the security before other markets can trade.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-30. This file number should be included on the subject line if e-mail 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 such 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-2017-30, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3 The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of the notice of Amendment No. 3 in the Federal Register. The Commission notes that the proposed rule change,

as modified by Amendment No. 3 remains identical to the version published for notice and comment on August 24, 2017,⁶⁵ except for the proposed deletion described above,⁶⁶ and that the only comments the Commission received on this proposed rule change were in support of the proposal. The Commission also has found that the proposal, as modified by Amendment No. 3, is consistent with the Exchange Act for the reasons discussed herein. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.⁶⁷

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁶⁸ that

⁶⁵ See Notice, supra note 8.

⁶⁶ See note 11, supra.

⁶⁷ 15 U.S.C. 78s(b)(2).

⁶⁸ Id.

the proposed rule change (SR-NYSE-2017-30), as modified by Amendment No. 3 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁹

Brent J. Fields
Secretary

⁶⁹ 17 CFR 200.30-3(a)(12).



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

March 23, 2018

Ms. Dana G. Fleischman
LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022

**Re: Spotify Technology S.A.
TP File No. 18-10**

Dear Ms. Fleischman:

In your letter dated March 23, 2018 (the "Request Letter"), you request on behalf of Spotify Technology S.A. (the "Company"), a Luxembourg limited liability company based in Sweden, that the staff (the "Staff") of the Division of Trading and Markets (the "Division") will not recommend that the Securities and Exchange Commission (the "Commission") take enforcement action solely in connection with and to the extent that the proposed direct listing (the "Listing") of the Company's ordinary shares (the "Shares") on the New York Stock Exchange, Inc. (the "NYSE"), and the registration (the "Registration") with the Commission of a registration statement on Form F-1 (the "Form F-1") of resales of Shares by certain existing shareholders of the Company (the "Registered Shareholders"), when viewed together with certain investor-related activities taking place in connection with the Registration and Listing, could cause the Registration and Listing to be deemed a "distribution" for purposes of Regulation M under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), if the Company, the investment banking firms engaged by the Company in connection with the Registration and Listing (the "Financial Advisors"), the Registered Shareholders, and their respective affiliated purchasers, follow the approach that is described in the Request Letter and below.¹

Response:

Rules 101 and 102 of Regulation M are anti-manipulation rules that prohibit issuers, selling security holders, underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities, and any of their affiliated purchasers, from bidding for, purchasing, or attempting to induce any person to

¹ We have attached a copy of the Request Letter. Each defined term in our Response has the same meaning as defined, directly or by reference, in the attached Request Letter, unless we note otherwise.

bid for or purchase, any security that is the subject of a distribution until after the applicable restricted period (i.e., after each person's "completion of participation" in the distribution), except as specifically permitted under the rules.

In the Request Letter, you represent that the Company will not offer or issue any new Shares under the Form F-1 for at least 90 days after the Form F-1 has been declared effective by the Commission (the "Effective Period") and that the Company will not receive any proceeds from the sale of Shares by any of the Registered Shareholders. You also represent that resales of Shares by the Registered Shareholders pursuant to the Form F-1 will be made solely through ordinary brokerage transactions on the NYSE (and certain other public trading venues) at prevailing market prices. Nevertheless, you also represent that the Company will engage in certain investor-related activities in connection with the Registration and Listing that could cause the Registration and Listing, when viewed together, to be deemed a "distribution" of the Shares and, thus, subject to the prophylactic trading restrictions under Rules 101 and 102 of Regulation M during the applicable restricted period.² You represent that, unlike a traditional underwritten offering (in which new shares are being offered and issued at a specific "offering price" that has been determined), here, there are neither any new shares being distributed under the Form F-1 nor any "offering price" to be determined, so it is unclear whether the Registration and Listing involve a Regulation M "distribution" and, if so, what, "restricted period" would be appropriate to observe in such case.

Accordingly, you represent that the potential application of Regulation M to the Registration and Listing is unclear and could prevent the Registration and Listing from being able to proceed. Thus, you request that the Division confirm that it will not recommend that the Commission take enforcement action solely in connection with the Registration and Listing if the Company, the Financial Advisors, the Registered Shareholders, and their respective affiliated purchasers, each observe the proposed "restricted period" and conduct the activities with respect to the Registration and Listing, as described in the Request Letter.

Based on the Request Letter, the Staff understands the following additional representations to be pertinent to your request for relief:

- The Company, the Financial Advisors, the Registered Shareholders, and their respective affiliated purchasers will each observe, solely with respect to such Registration and Listing and in accordance with the activities described in the Request Letter, a restricted period that commences on the fifth business day prior to the determination by the designated market maker (the "DMM") of the opening trading price of the Shares on the NYSE (such price, the "Opening Price" and the determination by the DMM of the Opening Price, the "NYSE Opening Time") and ends with the commencement of secondary market trading in the Shares on the NYSE (the "NYSE Commencement Time");

² 17 CFR §§ 242.101, 242.102.

- Any resales of Shares made during the Effective Period pursuant to the Form F-1 registration statement will be effected solely through ordinary brokerage transactions into an “independent market” (i.e., one not dominated or controlled by the Company, the Financial Advisors, the Registered Shareholders, or their respective affiliated purchasers, and without any special selling efforts³ or any involvement or facilitation by or coordination between the Company, the Financial Advisors, the Registered Shareholders, or their respective affiliated purchasers, with the exception of maintaining the Form F-1’s effectiveness and the potential establishment of the brokerage accounts for interested Registered Shareholders, as described in the Letter (the “Brokerage Accounts”);⁴
- The Company will not offer or issue any new Shares for sale under the Form F-1 during the Effective Period; coordinate, solicit or facilitate (other than by filing and maintaining the effectiveness of the Form F-1 and arranging for the Listing of the Shares on the NYSE) any resales of Shares by the Registered Shareholders (or engage in any additional activities or special selling efforts that are designed to facilitate resales of Shares by the Registered Shareholders pursuant to the Form F-1); and receive any proceeds from the sale of Shares by any of the Registered Shareholders during the Effective Period;
- The Company will engage the Financial Advisors solely to provide advice and assistance to the Company with respect to the filing of the Form F-1 and the Listing of the Shares on the NYSE but not to provide underwriting, solicitation, or distribution services with respect to any offers or sales made under the Form F-1;
- The DMM, which shall be unaffiliated with the Company and the Financial Advisors, will operate independently of such persons and will be solely responsible for establishing the Opening Price and maintaining an orderly market for the Shares;
- The Financial Advisors will not further assist the Company in the planning of, or actively participate in, investor meetings. Moreover, the Company has not, directly or indirectly, engaged or requested the Financial Advisors to perform any activities after the NYSE Opening Time designed to facilitate resales by the Registered Shareholders pursuant to the Form F-1 (other than with respect to the

³ In the Request Letter, you note that none of the investor-related activities of the Company described in the Request Letter will continue through or resume after the NYSE Opening Time until the end of the Effective Period.

⁴ The Form F-1’s “Plan of Distribution” section allows resales of Shares by the Registered Shareholders pursuant to the Form F-1 only through brokerage transactions effected on the NYSE (and certain other public trading venues) at prevailing market prices (i.e., it does not provide for the ability of the Registered Shareholders to effect an underwritten resale of Shares pursuant to the Form F-1).

potential establishment of the Brokerage Accounts for interested Registered Shareholders);

- The Company will not engage in, and has not and will not, directly or indirectly, request the Financial Advisors to engage in, any special selling efforts or stabilization or price support activities in connection with such resales;
- The timing of any resales will be at the sole discretion of the Registered Shareholders and, with the exception of maintaining the effectiveness of the Form F-1 during the Effective Period and any ministerial or administrative activities relating thereto, the Company will not participate or be involved in any resale of Shares by, between, or on behalf of the Registered Shareholders; and
- Neither the Financial Advisors nor their affiliates will have discretionary authority to transact in the Shares held in the Brokerage Accounts, and no fees or expenses will be paid by the Company (or any of the Financial Advisors), in connection with the Brokerage Accounts.

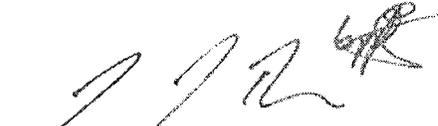
Accordingly, based on the facts and representations that you have made in the Request Letter, but without necessarily concurring in your analysis, the Division will not recommend that the Commission take enforcement action under Rules 101 and 102 Regulation M solely in connection with the Registration and Listing, provided that the Company, the Financial Advisors, the Registered Shareholders, and their respective affiliated purchasers each adhere to the “restricted period” and the activities to be conducted with respect to the Registration and Listing, as described in the Request Letter and above.

This position concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of statutory or regulatory provisions of the federal securities laws. Moreover, this position is based on the facts you have presented and the representations you have made, and any different facts or representations may require a different response. In the event that any material change occurs in the facts and representations in the Request Letter, you should promptly present for consideration the facts to the Division. This position is subject to modification or revocation if, at any time, the Commission or the Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, your attention is directed to the continuing application of the antifraud and anti-manipulation provisions of the

Ms. Dana G. Fleischman
March 23, 2018
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Exchange Act, particularly sections 9(a) and 10(b), and Rule 10b-5 thereunder.
Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with each person relying on this position.

Very truly yours,



Josephine J. Tao
Assistant Director

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March 23, 2018

Ms. Josephine J. Tao
Assistant Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Spotify Technology S.A.

Dear Ms. Tao:

We are writing on behalf of our client, Spotify Technology S.A., a Luxembourg limited liability company based in Sweden (the “Company”), with respect to the potential application of Regulation M (“Regulation M”) under the U.S. Securities Exchange Act of 1934 (the “Exchange Act”) in connection with the proposed direct listing (the “Listing”) of the Company’s ordinary shares (the “Shares”) on the New York Stock Exchange, Inc. (the “NYSE”) and the registration (the “Registration”) with the Securities and Exchange Commission (the “SEC” or “Commission”) on Form F-1 (as defined below) of certain resales of Shares by the Company’s existing shareholders.

As further discussed below, the Company plans to engage in certain investor relations and investor education activities in connection with the Registration and Listing that could cause the Registration and Listing, when viewed together, to be deemed a “distribution” of the Shares for purposes of Regulation M under the Exchange Act (“Regulation M”). To the extent the Registration and Listing could be deemed to constitute a Regulation M distribution, we hereby request that the staff (the “Staff”) of the SEC’s Division of Trading and Markets confirm that, for purposes of observing an appropriate “restricted period” in such context, it will not recommend that the Commission take enforcement action if the Company, the Financial Advisors (as defined below),¹ the Registered Shareholders (as defined below) and their respective affiliated purchasers

¹ As discussed further below, the Financial Advisors are not acting as underwriters in connection with the Registration and Listing and nothing herein is intended to imply or concede that, in the view of the Company, the Financial Advisors or the Registered Shareholders, the Financial Advisors are “distribution participants” or “affiliated purchasers” of the Company or Registered Shareholders for purposes of Regulation M. Moreover, nothing in this letter is intended to imply or concede that, in the view of the Company, the Financial Advisors, or the Registered Shareholders, the Registration and Listing is or should be deemed a Regulation M distribution.

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each observe, solely with respect to such Registration and Listing and in accordance with the activities that will be conducted in respect of such Registration and Listing as described in this letter, a restricted period that commences on the fifth business day prior to the determination by the DMM (as defined below) of the opening trading price of the Shares on the NYSE (such price, the “Opening Price” and the determination by the DMM of the Opening Price, the “NYSE Opening Time”) and ends with the commencement of secondary market trading in the Shares on the NYSE (the “NYSE Commencement Time”).²

I. Discussion

A. Background Regarding the Registration and Listing

The Company, which was founded in 2006 and is engaged in the business of streaming music over the internet, is proposing to list its Shares on the NYSE in part in order to provide its shareholders with increased liquidity. The Listing will be effected pursuant to recent amendments to the NYSE Listed Company Manual (the “LCM”) that permit an issuer to list its securities on the NYSE without having first engaged in an underwritten initial public offering (the “Direct Listing Rules”).³ In order to accomplish the proposed Listing, the Company intends first to register under the U.S. Securities Act of 1933 (the “Securities Act”) certain resales of Shares via the filing with the SEC of a Registration Statement on Form F-1 (the “Form F-1”).⁴

The Form F-1 will register the resale of Shares to the public by certain of the Company’s shareholders, including employees of the Company and those holders of Shares who are presently limited by the volume and manner of sale restrictions of the exemption from registration provided by Rule 144 under the Securities Act (all such shareholders collectively, the “Registered Shareholders”), and will include the information required by SEC Regulation S-K with respect to the Company and the Registered Shareholders.

² We note that, to the extent the Registration and Listing are deemed to constitute a Regulation M distribution of the Company’s Shares, the Company, the Financial Advisors, the Registered Shareholders and their respective affiliated purchasers (as well as any persons that are “distribution participants” within the meaning of Regulation M), would be able during the relevant restricted period to engage in any of the communications and other activities excepted from the general prohibitions set forth in Rules 101(a) and 102(a) of Regulation M pursuant to paragraph (b) of Rules 101 and 102 (as applicable to such person’s particular status), including, for example, under paragraph (b)(9) of Rule 101 and paragraph (b)(5) of Rule 102, which permit offers to sell or the solicitation of offers to buy the securities being distributed.

³ See SEC Release No. 34-82627 (Feb. 2, 2018) (the “Direct Listing Release”). See also amended LCM Section 102.01B and amended NYSE Rules 15 and 104. Footnote (E) to LCM Section 102.01B states that the NYSE “will, on a case by case basis, exercise discretion to list companies whose stock is not previously registered under the Exchange Act, where such a company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements.”

⁴ The process and timing of the Registration and Listing have been discussed by the Company with the staff of the SEC’s Division of Corporation Finance (the “Corp Fin Staff”).

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Following the declaration of effectiveness of the Form F-1, the Company will be a public company subject to the reporting requirements of the Exchange Act. The Company plans to maintain effectiveness of the Form F-1 (including updating the information contained therein through the filing of prospectus supplements under Securities Act Rule 424(b) as appropriate) for a period of at least 90 days after the Form F-1 has been declared effective by the SEC (the “Effective Period”). After the Effective Period, the Company plans to file a post-effective amendment terminating the registration for resale by the Registered Shareholders on the Form F-1 and deregistering any Shares that have not been resold by the Registered Shareholders pursuant to the Form F-1. The Company will not offer or issue any new Shares for sale under the Form F-1 and will not receive any proceeds from the sale of Shares by any of the Registered Shareholders.

B. Activities of the Company in Connection with the Registration and Listing

The Company first publicly filed the Form F-1 with the SEC on February 28, 2018.⁵ The Company also held an “Investor Day” on March 15, 2018 at which it addressed the filing of the Form F-1 and planned Listing, and answered investors’ questions regarding such matters. The Investor Day presentation covered the following general areas: the Company’s history, business description, business strengths and business strategies, industry overview, its relationships with artists, historical financial performance, subscriber data and other key performance indicators included in the Form F-1,⁶ and a description of the Listing process. The Investor Day presentation will be treated by the Company as a “road show” for purposes of Section 6(e)(1) of the Securities Act (as amended by the FAST Act). As required by Securities Act Rule 433(d)(8)(ii), one version of the electronic road show will be made publicly available on the Company’s investor relations website and will be viewable, without restriction, by any person (including prospective investors).

Following the initial “Investor Day” referenced above and prior to the NYSE Opening Time, the Company may engage in potential additional investor education activities in connection with the Registration and Listing, including possible follow-up Investor Days and individual meetings with investors. After the Form F-1 has been declared effective by the Commission, the Company is expected to engage in activities consistent with its status as a U.S. public company, including engaging in normal course investor relations activities and fulfilling its obligations as a reporting company under the Exchange Act (including, for example, with respect to the issuance of earnings information, press releases and Exchange Act filing requirements). The Company will not coordinate, solicit or facilitate (other than by filing and maintaining the effectiveness of the Form F-1 during the Effective Period and arranging for the Listing on the NYSE) any resales of Shares by the Registered Shareholders pursuant to the Form F-1. In

⁵ See Registration Statement on Form F-1 (File No. 333-223300).

⁶ See, e.g., the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of the Form F-1.

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particular, following the NYSE Opening Time, the Company will not engage in any additional activities designed to facilitate resales by the Registered Shareholders pursuant to the Form F-1.⁷

C. Activities of the Financial Advisors in Connection with the Registration and Listing

In connection with the Registration and Listing, the Company has entered into advisory engagement letters with certain financial advisors (the “Financial Advisors”) to provide advice and assistance to the Company with respect to the filing of the Form F-1 and the Listing of the Shares on the NYSE (the “Advisory Engagement Letters”). Services to be performed by the Financial Advisors as set forth in the Advisory Engagement Letters include providing advice and assistance to the Company with respect to the Company’s (i) defining of objectives with respect to the Registration and Listing, (ii) drafting of the Form F-1 and (iii) drafting of public communications and investor presentations in connection with the Registration and Listing. Notably, the Advisory Engagement Letters do not engage any of the Financial Advisors to act in an underwriting capacity in respect of any offers or sales made by the Registered Shareholders pursuant to the Form F-1 and expressly provide that the Financial Advisors will not further assist the Company in the planning of, or actively participate in, investor meetings.⁸ Moreover, the Company has not, directly or indirectly, engaged or requested the Financial Advisors to perform any activities after the NYSE Opening Time designed to facilitate resales by the Registered Shareholders pursuant to the Form F-1 (other than with respect to the potential establishment of brokerage accounts for interested Registered Shareholders as described above). Finally, none of the Financial Advisors have been engaged or requested, directly or indirectly, by the Company (whether before or after the NYSE Opening Time) to stabilize or support the price of the Shares.

Pursuant to NYSE Rules 15 and 104, the Company has selected one of the Financial Advisors to serve as the “financial advisor” contemplated by the Direct Listing Rules (the “Designated Company Advisor”), and the Designated Company Advisor will be available to consult with the NYSE and the appointed designated market maker (the “DMM”)⁹ for the Shares in respect of the Listing and the determination by the DMM of the Opening Price for the Shares.¹⁰ In

⁷ If the Company, directly or indirectly, were to engage in special selling efforts with respect to *another* offering of the Company’s Shares (e.g., a registered follow-on offering by the Company) during the Effective Period, we recognize that such activities could be viewed as a separate Regulation M distribution with its own associated restricted period. This letter does not request any relief from the Staff in respect of any such other distribution, and we understand that the Staff’s recommendation with respect to enforcement action is solely in connection with the Registration and Listing.

⁸ As disclosed in the section of the Form F-1 entitled “Risks Related to Owning Our Ordinary Shares,” the Listing is taking place “via a novel process that is not an underwritten initial public offering.” Further, as discussed with the Corp Fin Staff and as noted in the afore-mentioned section and the “Plan of Distribution” section in the Form F-1, the Registration and Listing is being effected without underwriters and without a book building process.

⁹ The DMM will be an entity that is not an affiliate of the Company or the Financial Advisors.

¹⁰ NYSE Rule 15(c)(1)(D) provides that the Reference Price for a security that is listed under Footnote (E) to Section 102.01B of the NYSE Listed Company Manual (the “LCM”) that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.” NYSE Rule 104(a)(2) requires that when “facilitating the opening on the first day of trading of a security that is listed under Footnote (E) to Section

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the Direct Listing Release, the Exchange stated that “it believes that such a financial advisor would have an understanding of the status of ownership of outstanding shares in the company and would have been working with the issuer to identify a market for the securities upon listing. As a result, it believes such financial advisor would be able to provide input to the DMM regarding expectations of where such a new listing should be priced, based on pre-listing selling and buying interest and other factors that would not be available to the DMM through other sources.”¹¹ The “Plan of Distribution” section in the Form F-1 describes the process for determination by the DMM of the Opening Price and explains the roles of the DMM and the Designated Company Advisor with respect thereto.

However, although the Direct Listing Rules require the DMM to consult with the Designated Company Advisor, the Exchange notes that “the DMM would remain responsible for facilitating the opening of trading of such security, and the opening of such security must take into consideration the buy and sell orders available on the Exchange’s book.” Moreover, according to the Exchange, “just as a DMM is not bound by an offering price in an IPO, and will open such a security at a price dictated by the buying and selling interest entered on the Exchange in that security, a DMM would not be bound by the input he or she receives from the financial advisor.”¹²

The Financial Advisors will receive a fixed flat fee from the Company for the provision of advisory services in respect of the Registration and Listing, which fee will not depend on the amount or price of the Shares registered on the Form F-1, nor the amount of Shares ultimately sold by the Registered Shareholders pursuant to the Form F-1.

D. Limitations on Resales Effected Pursuant to the F-1

The Form F-1’s “Plan of Distribution” allows resales of Shares by the Registered Shareholders pursuant to the Form F-1 only through brokerage transactions effected on the NYSE and certain other public trading venues at prevailing market prices.¹³ The Form F-1’s “Plan of Distribution” does not provide for the ability of the Registered Shareholders to effect an underwritten resale of Shares pursuant to the Form F-1. Moreover, the Company will not engage in, and (as indicated above) has not and will not directly or indirectly request the Financial Advisors to engage in, any special selling efforts or stabilization or price support activities in

102.01B of the LCM and that has not had recent sustained history of trading in a Private Placement Market prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.” According to the Exchange, the amendments to NYSE Rules 15 and 104 are “designed to provide DMMs with information to assist them in meeting their obligations to open a new listing under [Footnote (E) to LCM Section 102.01B].” Direct Listing Release at p. 9.

¹¹ Direct Listing Release at p. 9.

¹² Direct Listing Release at n. 35.

¹³ See “Plan of Distribution” section of the Form F-1. We believe resales effected through ordinary brokerage transactions on the NYSE and other public trading venues at prevailing market prices, and with a fair and orderly market being maintained by the DMM, would satisfy the Staff’s concern that resales be made into an “independent market” (*i.e.*, in this case, one not dominated or controlled by the Company, the firms acting as Financial Advisors or the Registered Shareholders) and without the use of special selling efforts or special selling methods.

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connection with such resales.¹⁴ The timing of any such resales will be at the sole discretion of the Registered Shareholders and, with the exception of maintaining the Form F-1's effectiveness during the Effective Period and any ministerial or administrative activities relating thereto, the Company will not participate or be involved in any resale of Shares by, between or on behalf of the Registered Shareholders.¹⁵

II. Potential Application of Regulation M and Request for Relief

Regulation M is intended to protect the integrity of the securities offering process by preventing persons with a financial interest in a securities offering from taking particular actions that might manipulate the market for the securities being offered. Rules 101 and 102 of Regulation M apply to a subset of securities offerings that are deemed to constitute "distributions." The term "distribution" is defined in Rule 100 of Regulation M as "an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods."

As noted above, the investor relations and investor education activities taking place in connection with the Registration and Listing as described herein, could cause the Registration and Listing, when viewed together, to be deemed a distribution for purposes of Regulation M. However, unlike a traditional underwritten offering in which the participating underwriters establish a public offering price for the securities to be sold (thus fixing a reference point for the start of the Regulation M restricted period) and the distribution is deemed to be complete when all of the securities to be sold have been distributed (thus establishing the end of the Regulation M restricted period), the determination of an appropriate restricted period to observe in the case of the Registration and Listing is not clear.

Accordingly, to the extent that the Registration and Listing could be deemed to constitute a Regulation M distribution, we hereby respectfully request that the Staff confirm that, for purposes of observing an appropriate restricted period in such context, it will not recommend that the Commission take enforcement action if the Company, the Financial Advisors, the Registered Shareholders and their respective affiliated purchasers each observe, solely with respect to such Registration and Listing and in accordance with the activities that will be conducted in respect of such Registration and Listing as described in this letter, a restricted period that commences on the fifth business day prior to the determination by the DMM of the Opening Price for the Shares on the NYSE and ends at the NYSE Commencement Time.

¹⁴ As resales pursuant to the Form F-1 will take place at prevailing market prices, such stabilizing would be prohibited by Rule 104 of Regulation M.

¹⁵ Specifically, the Form F-1's "Plan of Distribution" provides that the Company is "not party to any arrangement with any Registered Shareholder or any broker-dealer with respect to sales of the ordinary shares by the Registered Shareholders. As such, the Company will have no input if and when any Registered Shareholder may, or may not, elect to sell their ordinary shares or the prices at which any such sales may occur, and there can be no assurance that any Registered Shareholders will sell any or all of the ordinary shares covered by this prospectus."

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We believe the circumstances present here provide an appropriate basis for the Staff to grant the relief requested herein and that the grant of such relief would be consistent with the public interest and the protection of investors. In this regard, we note that Regulation M takes a prophylactic approach and does not provide a “safe harbor” for conduct that is engaged in pursuant to the restrictions set forth in the applicable rules. Specifically, compliance with Regulation M does not provide protection with respect to activity that is otherwise deemed to be fraudulent or manipulative.¹⁶ As a result, confirmation by the Staff that it will not recommend enforcement action should the persons referenced above take the approach outlined herein with respect to the Registration and Listing, will provide much-needed clarity to such persons, enabling the Registration and Listing to proceed, without harming investors or the securities markets.

* * *

We appreciate your consideration of this matter and look forward to your response. This letter is being submitted to you in draft form and on a confidential basis so that we may have the opportunity to address any comments or concerns that you or the other members of the Staff may have prior to reaching a final decision. If for any reason the Staff is not disposed to grant the relief requested hereby, we would appreciate the opportunity to discuss the matter with you prior to the issuance of a formal response.

Should you have any questions or require further information, please do not hesitate to contact the undersigned at 212-906-1220.

Very truly yours,



Dana G. Fleischman
of LATHAM & WATKINS LLP

cc: Ms. Joan Collopy, SEC Division of Trading and Markets
Mr. John Guidroz, SEC Division of Trading and Markets
Ms. Elizabeth Sandoe, SEC Division of Trading and Markets
Mr. Horacio Gutierrez, General Counsel, Spotify Technology S.A.
Mr. Gregory P. Rodgers, Latham & Watkins LLP

¹⁶ See Rule 100(a) of Regulation M.

Added text underlined;
Deleted text in [brackets].

NYSE Listed Company Manual

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Section 1 The Listing Process

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102.00 Domestic Companies

102.01 Minimum Numerical Standards—Domestic Companies—Equity Listings

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102.01B A Company must demonstrate an aggregate market value of publicly-held shares of \$40,000,000 for companies that list either at the time of their initial public offerings ("IPO") (C) or as a result of spin-offs or under the Affiliated Company standard or, for companies that list at the time of their Initial Firm Commitment Underwritten Public Offering (C), and \$100,000,000 for other companies (D)(E). A company must have a closing price or, if listing in connection with an IPO or Initial Firm Commitment Underwritten Public Offering, an IPO or Initial Firm Commitment Underwritten Public Offering price per share of at least \$4 at the time of initial listing.

* * * * *

(E) Generally, the Exchange expects to list companies in connection with a firm commitment underwritten IPO, upon transfer from another market, or pursuant to a spin-off. However, the Exchange recognizes that some companies that have not previously had their common equity securities registered under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list their common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares. Consequently, the Exchange will, on a case by case basis, exercise discretion to list companies whose stock is not previously registered under the Exchange Act, where such a company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. In exercising this discretion, the Exchange will determine that such company has met the \$100,000,000

aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation (a "Valuation") of the company and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market"). The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market. Alternatively, in the absence of any recent trading in a Private Placement Market, the Exchange will determine that such company has met its market-value of publicly-held shares requirement if the company provides a Valuation evidencing a market value of publicly-held shares of at least \$250,000,000.

Any Valuation used for this purpose must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations.* The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. The Exchange will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the Exchange's market value requirement. The Exchange may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

* A valuation agent will not be deemed to be independent if:

- At the time it provides such valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.

- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.

* * * * *

Rules of the New York Stock Exchange LLC

Rule 15. Pre-Opening Indications and Opening Order Imbalance Information

(c) Reference Price.

(1) The Reference Price for a security, other than an American Depositary Receipt ("ADR"), will be:

(A) the security's last reported sale price on the Exchange;

(B) the security's offering price in the case of an initial public offering ("IPO"); [or]

(C) the security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange ("transferred security")[.]; or

(D) for a security that is listed under Footnote (E) to Section 102.01B of the Listed Company Manual that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.

Rule 104. Dealings and Responsibilities of DMMs

(a) DMMs registered in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. The responsibilities and duties of a DMM specifically include, but are not limited to, the following:

(2) Facilitate openings and reopenings, including the Midday Auction, for each of the securities in which the DMM is registered as required under Exchange rules. This may include supplying liquidity as needed. (See Rule 123D for additional responsibilities of DMMs with respect to openings and Rule 13 with respect to Reserve Order interest procedures at the opening.) DMM and DMM unit algorithms will have access to aggregate order information in order to comply with this requirement. (See Supplementary Material .05 of this 104 with respect to odd-lot order information to the DMM unit algorithm.) When facilitating the opening on the

first day of trading of a security that is listed under Footnote (E) to Section 102.01B of Listed Company Manual and that has not had recent sustained history of trading in a Private Placement Market prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.

Rule 123D. Openings and Halts in Trading

(d) Initial Listing Regulatory Halt. The Exchange may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing. This regulatory halt will be terminated when the DMM opens the security.

(e) Equipment Changeover.—The Exchange has established a non-regulatory trading halt condition designated as "Equipment Changeover".

This condition may be used when trading in a particular security is temporarily inhibited due to a systems, equipment or communications facility problem or for other technical reasons.

In making a determination on whether to halt trading in a security because of an "Equipment Changeover" condition, it is important to keep in mind that once halted, trading cannot be resumed for at least one minute even though, in many cases, the systems or equipment problem may be corrected in a much shorter period of time. Further, if, during the "Equipment Changeover" trading halt, a pre-opening indication would be required to be published or a regulatory condition occurs, the nature of the halt will be changed, notice must be disseminated and trading cannot resume until three minutes after the first indication after the new halt condition. This factor should be taken into consideration along with market condition factors in making a determination on whether to declare an official trading halt.

All other policies relating to nonregulatory halts would apply including price indications.
