

Via Email

February 22, 2018

Brent J. Fields  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

*Re: File Number SR-NYSE-2017-30*

Dear Mr. Secretary:

I am writing on behalf of the Council of Institutional Investors (CII), a nonprofit, nonpartisan association of public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management exceeding \$3.5 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$25 trillion in assets under management.<sup>1</sup>

The purpose of this letter is to commend the staff of the Securities and Exchange Commission (Commission) for its thorough review of New York Stock Exchange LLC (NYSE) proposed rule change to modify the listing requirements standards to facilitate direct listings.<sup>2</sup> We generally agree with the Commission that the proposed rule change is:

[C]onsistent with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . and, in general, to protect investors and the public interest.<sup>3</sup>

We generally support permitting direct listings. We believe that they can be more cost-effective than an initial public offering (IPO) while still providing necessary investor protections.

---

<sup>1</sup> For more information about the Council of Institutional Investors (“CII”), including its members, please visit CII’s website at <http://www.cii.org/members>.

<sup>2</sup> Notice of Filing of Amendment No. 3 and 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 Order Granting Accelerated Approval of Proposed Rule Change, as Connection with an Underwritten Initial Public Offering and Related Changes to Rules 15, 104, and 123D, Exchange Act Release No. 82,627 (Feb. 2, 2018), <https://www.sec.gov/rules/sro/nyse/2018/34-82627.pdf>.

<sup>3</sup> *Id.* at 12.

We strongly support the NYSE’s decision to remove a provision from an earlier version of the proposed rule “that would have allowed a company to list immediately upon effectiveness of an [Securities] Exchange Act [of 1934] registration statement only, without any concurrent . . . Securities Act of 1933 (“Securities Act”) registration.”<sup>4</sup> This change in the proposed rule would appropriately require a company in a direct listing to file a resale registration that “will be subject to traditional review and comment process of the SEC staff . . . [and] issuers . . . will need to consider the application of the gun-jumping and liability provisions of the Securities Act.”<sup>5</sup> We believe requiring a concurrent Securities Act registration is critical to ensuring that direct listings do not compromise investor protections.

We understand the costs of a direct listing to a company are likely to be much lower than those for an IPO.<sup>6</sup> For example, Spotify will reportedly pay its bankers \$30 million to facilitate a direct listing, as compared with the nearly \$100 million that Snap Inc. paid its bankers for conducting its IPO.<sup>7</sup>

Finally, we note that direct listings may provide a broader range of institutional investors and retail investors with the opportunity to invest in the equity of a certain class of companies—including unicorns—which traditionally have been limited to a narrow group of institutional investors.<sup>8</sup> Thus, direct listings can potentially facilitate the continued and important role of public stock markets in democratizing access to equity while providing necessary investor protections.<sup>9</sup>

Thank you for considering our views on this matter. Please contact me with any questions.

Sincerely,



Jeffrey P. Mahoney  
General Counsel

---

<sup>4</sup> *Id.* at 3 n.11.

<sup>5</sup> Skadden, Arps, Slate, Meagher & Flom LLP, Capital Markets Alert: SEC Approves NYSE Rules to Facilitate Direct Listings 2 (Feb. 8, 2018), <https://www.skadden.com/insights/publications/2018/02/sec-approves-nyse-rules-to-facilitate-direct>.

<sup>6</sup> *See, e.g.*, Robert Pozen, Opinion, Markets Insight, Spotify’s Direct Listing Is a Template for Unicorns Riding High, *Fin. Times*, Jan. 30, 2018, at 2, <https://www.ft.com/content/46a35692-01ce-11e8-9650-9c0ad2d7c5b5b>.

<sup>7</sup> *Id.*; Richard Teitelbaum, Why Spotify Is Skipping Wall Street, *Inst. Investor*, Feb. 6, 2008, at 2 (Noting that in “a typical IPO, fees might total 5 percent or so of an offering [compared to] . . . 1.5 percent of the prospective proceeds [estimated in a Spotify direct listing]”), <https://www.institutionalinvestor.com/article/b16td62m6j5hx9/why-spotify-is-skipping-wall-street>.

<sup>8</sup> *See, e.g.*, Robert Pozen at 2 (“private companies like Spotify have a lot of name recognition with individual investors, who will have a chance to buy a stake in a successful start-up — as opposed to the select group of institutional investors who are allowed to buy shares in unicorns”).

<sup>9</sup> *Id.* (“Thus, direct listings will continue the role of public stock markets in democratizing access to the equity of successful companies.”).